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Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

NO_____

CURTIS L. WRENN
95 Champion Street
West Carthage, NY 13619,

Petitioner,

vs

VANDERBILT UNIVERSITY HOSPITAL; JOHN C. CALLISON, VANDERBILT UNIVERSITY HOSPITAL; SECRETARY, DEPARTMENT OF HEALTH & HUMAN SERVICES; CHAIRMAN, U.S. EEOC; & U. S. ATTORNEY GENERAL, DEPARTMENT OF JUSTICE.

Respondents.

BRIEF FOR PETITIONER

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
DOCKET NOS. 93-5994; 93-6181

Curtis L. Wrenn
95 Champion Street
West Carthage, NY 13619
Tel: (315) 493-6801

30 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the denial of information under the FOIA, by the EEOC, DHHS and DOJ, was contrary to decisions of this Court?

2. Whether the sanction (without explanation) imposed on the petitioner in favor of the EEOC, by the District Court, was contrary to Rule 11, Title VII, the ADEA and decisions rendered by this Court?

3. Whether sanctions by District Court, without a hearing, violated the Fourth, Fifth, and Fourteenth Amendments?

4. Whether the imposition of "double costs" by the CA against petitioner violated his rights, privileges and immunities under Title VII, the ADEA, and the FOIA?

5. Whether the imposition of "double costs", was contrary to the following Amendments: First (free speech), Fourth (unreasonable seizures), Fifth (denial of a due process hearing), Eighth (excessive fine AND cruel and unusual punishment) and

the Fourteenth (procedural due process).

6. Whether the District Court's refusal to acknowledge petitioner's prima facie case of unlawful denial of equal employment opportunity led to an erroneous conclusion of law?

7. Whether the Court of Appeals' characterization of the petitioner as "African American" constitutes wanton and malicious effort to justify its unsupported decision, in that to the knowledge of the petitioner there is no such race of people which anthropologists have classified as "African American". (NOTE: The records in the case clearly demonstrate the petitioner has repeatedly stated that he is a member of the Negroid race)?

8. Whether petitioner has a "right" to file a complaint in the appropriate district court, under the FOIA, after he has exhausted his administrative remedies concerning the denial of information?

9. Whether the Department of Justice has authority to assist an individual, under Title VII, who alleges that he is a victim of pattern and practice unlawful employment discrimination?

10. Can an employer avoid being found guilty of unlawful employment discrimination by alleging it considered a Negroid person but not another who was apparently more qualifed for the position at issue?

11. Whether the sanctions and double costs imposed on the petitioner, without a due process hearing, contravenes this Court's decision in Austin v. U.S. 61 LW 4811 (1993) (Also, 62 LW 2376 (1993)) AND other related decisons by the Court?

12. Whether the "weighing" of the evidence by the District Court was a clear abuse of discretion in granting summary judgment to the respondents? (App F p.48).

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(DETAILED IN PETITIONER'S APPENDIXES)

1 - Order, Sixth Circuit CA, 31 Jan 94

2 - Order, Sixth Circuit CA, 14 Mar 94

3 - Order, Sixth Circuit CA, 15 Mar 94

4 - Order, Sixth Circuit CA, 18 Apr 94

5 - Memorandum and Order, District Court, Middle District of TN, 10/15 Jun 93

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1254(1), 1651 and 1915.

Jurisdiction is also invoked under the Constitution and laws of the United States, including but not limited to the First, Fourth, Fifth, Eighth and Fourteenth Amendments; Title VII of the Civil Rights Act of 1964 as amended; Age Discrimination in Employment Act; and the Freedom of Information Act/Privacy Act, in that the decisions of the lower courts, if permitted to stand, will deprive the petitioner of equal employment opportunity, right of access to information compiled of him by federal agencies, and more importantly will deprive him of procedural due process rights, right of freedom of speech and the right of access to information compiled of and about him by agencies of the USA.

The jurisdiction of this Court is also invoked to have the Court review the actions of the lower courts, in that they have rendered decisions which if not reversed by this Court will contravene prior decisions of the Court and will invalidate Congressional mandates, including but not limited to Title VII and the ADEA. Also, the decisions are conflict with decisions of the other courts of appeals.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment I:

> Congress shall make no law ... abridging the freedom of speech ...; or the right of the people to peaceably ... to petition the Government for a redress of grievances.

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, ... against unreasonable ... seizures, shall not be violated ...

United States Constitution, Amendment V:

> Nor shall any person ... be deprived of life, liberty, or property, without due process of law ...

United States Constitution, Amendment VIII:

> Excessive bail bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

United States Constitution, Amendment XIV:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United Statesl; nor shall any State deprive any person of ... property, without due process of law; ..."

STATEMENT OF THE CASE

1. The issues in this case arose in 1990 when the petitioner was denied employment by Vanderbilt University Hospital for the position of Assistant Hospital Director. The employer advertised that it was accepting applications from individuals who met the advertised requirements. The petitioner submitted his application (App J) and despite having more than fifteen years of health care management experience, he was not considered, including not being interviewed.

2. The petitioner filed complaints with EEOC and DHHS following the denial of employment. Upon receiving the EEOC's Determination, he filed a request for information under the FOIA from the EEOC and also filed this lawsuit. (App J).

3. The Original Complaint was amended to add EEOC, DHHS and DOJ. The reason being correspondence and documents in petitioner's

possession demonstrated collusion, and aiding and abeting by the federal agencies and Vanderbilt's officials. (App M-R).

4. The FOIA request to the EEOC was denied in part and granted in part. The petitioner filed his appeal of the denial of the FOIA with the District Court.

5. On 10 Jun 93 the District Court dismissed all claims, alleging the petitioner "was not qualified" for the position at issue,"the Court does not find that the plaintiff has stated a viable claim under the FOIA", and that the "Court finds that the plaintiff's claims of conspiracy ... are without merit and are barred by the doctrine of res judicata".

6. The District Court's decision was appealed to the Sixth Circuit. The CA dismissed the appeal and impposed "double cost" allegedly because the appeal was frivolous. No facts or lack thereof was cited as a basis for the allegation.

REASONS FOR GRANTING WRIT

The Court should grant the petition on the grounds that the decisions of the lower courts, concerning the issues presented below, are clearly erroneous, in that the decisions are not supported by the facts of record nor applicable law. See, e.g., Pullman Standard v. Swint, 456 U.S. 273, 287-90, 102 S.Ct. 1781, 1789-91, 72 L.Ed.2d 66 (1982).

A. DENIAL OF INFORMATION UNDER FOIA:

1. The FOIA (5 USC 552(a)(3) provides:

> "An FOIA appeal can be filed in the ... the district where the requester lives. The requester can also file in the district where the documents are located or in Washington, D.C."
>
> -and-
>
> "When a requester goes to court, burden of justifying the witholding of documents is on the government."

2. The District Court dismissed the FOIA claim against the EEOC stating "the Court does not find that the plaintiff has stated a viable claim under the FOIA". See Appendix E and T. The court conveniently

ignored a long list of decisions by this Court. See e.g., Dept. of Justice v. Reporters Committee, 489 U.S. 749, 109 S. Ct. 1468,1481, 103 L.Ed.2d 774 (1989). See also EEOC v.Associated Dry Goods, 449 U.S. 590, 24 FEP 1356 (1981) (where the Court ratified the EEOC's practice of disclosing the investigative file to a charging party from his own file).

3. The CA upheld the District Court's decision despite the record showing that there was no "de nova" review. More important, there was no effort to have the EEOC justify its nondisclosure of information. Finally, the petitioner's factual and legal theories were apparently NOTCONSIDERED. See e.g., App J, N, S and T.

B. SANCTIONS IMPOSED BY DISTRICT COURT:

1. At issue is whether the pleadings and incorporated exhibits demonstrate that the petitioner's claims are frivolous or without foundation. The following

appendices clearly demonstrate that he had a legitimate basis for filing this lawsuit:

J - Original Complaint showing denial of equal employment opportunity.

K - Petitioner's application showing that he has more than fifteen years of health care management experience in hospitals of various sizes and functions including teaching.

L - The resume of the white female that was hired indicates she has had NO health care management experience.

M - First Amended Complaint showing Respondent Callison was part of the "list of attorneys" the Department of justice had offered to assist; how the DOJ informed the petitioner it did not "have authority to assist individuals"; how DOJ had assisted a convicted drug trafficker in a foreign country; how DOJ/FBI refused to process and/or investigate petitioner's conspiracy complaint concerning federal, state and private employers; how DHHS circulated a document nation-wide alleging an "extortion charge" against the petitioner, while at the same time refusing to process and/or investigate his charges against private and public employers, as is required by Title VI; and how DOJ and DHHS had denied petitioner's FOIA request. See also App M, O-P, Q-R.

T - Petitioner's FOIA request and denial by EEOC.

2. A review of the above will clearly show that petitioner's claims ARE NOT baseless nor are they without foundation. Thus the sanctions imposed on him were not determined by an "objective standard of reasonableness" as required by Business Guides v. Chromatic Communications Enters., 111 S.Ct. 922,112 L.Ed.Ed 1140 (1991).

3. The decisions of the lower courts in this case are not only contrary to this Court but the other CAs as well. See,e.g. McGinnis v. Ingram Equipment Co., CA 11 (en banc), No. 88-7596, 27 Nov 90, 59 LW 2363, 18 Dec 90, where the court stated:

> "We are aware of no case in which court imposed sanctions on a part who had acknowledged adverse precedent, but argued that the precedent should be reversed. Rule 11 simply is not intended to chill a an attorney's enthusiasm or creativity in pursuing factual or legal theories."

4. The question is whether the same "objective standard" apply to the Sixth Circuit? Also, whether the same "objective standard" apply to Wrenn?

C. "DOUBLE COSTS" IMPOSED BY CA:

1. The issue here is whether the factual and/or legal theories advanced by the petitioner IS SO LACKING IN MERIT that the imposition of double costs were warranted. Also, whether the imposition of double costs constitute: excssive fine, unreasonable seizure and unlawful deprivation. The claims at issues are based on "facts" or "circumstantial evidence". See App J (Complaint With Jury Demand); K (application for employment); L (successful applicant who is a white female "health care provider" with no apparent health care management experience); and M and O-R (showing "circumstantial evidence" of "cooperation and assistance" by DOJ.

2. The essential question is "Did the denial of a hearing in connection with the imposition of double costs, violate the petitioner's rights under the Constitution?" A review of recent decisions of this Court suggest that petitioner's right to a "mean-

ingful hearing at a meaningful time" was clearly violated. Not only was he denied hearing, the Court of Appeals pointed to facts or the lack thereof which could support the principle that a reasonable person would not have decided, on the basi of the relevant facts and legal theories, i the petitioner's favor. Of great importanc here are App J, L, M, N, P, Q and T.

3. The facts and argument in this cas clearly suggest, despite this being a "civil" rather than a "criminal" matter, that the petitioner's rights were violated. See, e.g., U.S. vs. James Daniel Good Real Property, U.S. Sup. Ct., No 92-1180, 13 Dec 93, 62 LW 4013 (Holding that: Absent exigent circumstances, the Due Process Claus requires the Government to afford notice and meaningful opportunity to be heard ...); and Austin v. U. S. Sup. Ct (1993), 61 LW 4811, 62 LW 2276 (1993) (Where the Court held the

Eighth Amendment doesn't depend on whether the forfeiture proceeding is criminal or civil, but rather on whether it is "punishment".) (It is undisputed that the sanctions herein complained of (filing restrictions, award of attorney fees and double costs) were imposed as "punishment" SOLELY because the petitioner exercised his rights.

D. PRIMA FACIE EMPLOYMENT DISCRIMINAITON:

1. At issue is whether the petitioner met the requirement of a prima facie case as is required by McDonnell Douglas Corp v. Green, 411 U.S. 792, 802 (1973). The lower courts said no, and stated he was "not qualified" and "he has utterly failed to prove that the circumstances give rise to an inference of discrimination. Petitioner submits that the courts have either misread or did not consider his application (App K) for the position. His resume details his health care management experience since 1970. Moreover, he was not interviewed while less qualified person were. For

example, the white female at App L. Thus it appears proper weight was not given to petitioner's qualifications (considering he previously held key positions: Associate Director, Administrator, and Chief Executive Officer) for the position at issue (Assistant Hospital Director). Moreover, there was no mentioning by either court of the lack of qualifications by the successful applicant, who was at the time a "health care provider" as opposed to the petitioner who has been a health care manager/executive since November 1970, following his retirement from the United States Army.

2. The decision here is not only contrary to McDonnell, it is contrary to the other courts of appeals. See, e.g., Burrus v. United Telephone Co. Kansas, Inc., (CA Kan 1982), 683 F.2d 339 (Objective job qualifications are to be considered in determining whether employment discrimina-

tion plaintiff has established prima facie case, but subjective criteria are to be treated at later stage of McDonnell Douglas, three-step process).

E. RACIAL CHARACTERIZATION BY CA:

1. The Court of Appeals statement that "Wrenn is African American ..." is pointed out here as another (see objective qualification at App K and "2" above) example where it appears that petitioner's pleadings and incorporated exhibits were given little if ANY weight. There is the question of whether his pleadings and his exhibits were EVEN considered. Ques: How did the CA determine "Wrenn is African American" when he did not appear before the court nor include such a designation in his pleadings?

2. If the petitioner's pleadings and incorporated exhibits were read AND considered, how did the CA determine that he was a member of some non-existent racial group such as African American.

F. AUTHORITY OF DOJ UNDER TITLE VII:

1. On December 6, 1983 in a letter addressed "To attorneys defending lawsuits by Mr. Curtis L. Wrenn" DOJ informed the attorneys that "Our office is willing to become a clearing house for exchange of information which may be useful in defending these case." Including in the list of attorney was John C. Callison, Esq., Office of General Counsel, Vanderbilt University.

2. On March 13, 1986 the petitioner asked DOJ to assist him in thirten cases of unlawful employment discrimination which the EEOC had determined that there was "reasonable cause to believe that the allegation of race discrimination is true". In a letter dated 14 Apr 1986 DOJ informed the petitioner "Since Department of Justice is not authorized to give legal assistance to private citizens or to represent them, we are unable to provide assistance to you in your cases."

3. At issue is whether DOJ is authorized to assist the petitioner or other "private citizens, in employment discrimination cases. Since at least 14 Apr 86 DOJ has maintained that it does not have authority assist the petitioner, while at the same time it was assisting other "private citizens", including the attorneys above, convicted drug trafficker, and recently filing a complaint in Aurora, CO on behalf of a person under the Disability Act.

4. The response by DOJ to petitioner's requests for assistance appear to be in conflict with the agency's actions, and more importantly contrary to The EEOC Act (Sec 706(f)(2) and 707(a)) and the Reorganization Plan No. 1 issued by President Carter in 1978. FOIA requests to DOJ for information concerning this subject has received no response to date.

G. INDIVIDUAL RIGHTS UNDER TITLE VII:

1. Title VII was enacted by Congress to remove artificial and arbitrary barriers to employment. Connecticut v. Teal, 457 U.S. 440,447, 102 S.Ct. 2525, 2531, 73 L.Ed.2d 130 (1982).

2. The CA held in its decision of 31 Jan 94 (App A) that Wrenn:

"While he can prove the first element of a prima facie case-Wrenn is African American (NOTE: The petitioner does not know how the CA came to this conclusion) and was over the age of 40 at the time of his application--he has utterly failed to prove that the circumstances give rise to an inference of discrimination. The position at issue was first offered to a black male. After he withdrew his name from consideration, the position was offered to a white female over the age of 40, who accepted it. These actions on the part of Vanderbilt belie any discriminaorty motive. Thus, despite Wrenn's assertion that he was qualified for the position, he cannot satisfy the fourth element of a prima facie case."

3. Despite a clear articulation of the prima facie requirements of McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973), the CA ignored the fact that a plaintiff may prove his claim by direct or circumstantial evidence. Thus the Sixth

Circuit is in conflict with the Fourth Circuit and other CAs. See, e.g., Brady v. Thurston Motor Lines, 726 F.2d 136 (4th Cir 1984). See also, Domingo v. New England Fish Co., 727 F.2d 1429 (CA Wash 1984). And see also App D-F, K-L, and O-P.

4. The CA would have us believe that because a "black male was offered the position at issue" Wrenn cannot establish a prima facie case. The CA conveniently ignored this Court's decision in Teal:

(1) "... irrespective of the form taken by the discriminatory practice, an employer's treatment of other members of the plaintiffs' group can be "of little comfort to the victims of ...discrimination." at 2535.

(2) "...Title VII protects individuals, not groups, and therefore that the manner in which an employer has treated other members of a group cannot defeat the claim of an individual who has suffered as a result of even a facially neutral policy.." at 2538-2539

H. DENIAL OF PROCEDURAL DUE PROCESS:

1. The issue here is whether the decisions of the lower courts are contrary

to Constitution and laws of the United States. See A-F, and compare with App F-J, and N-R.

2. The pleadings and incorporated exhibits in this case clearly demonstrate that the decisions of the lower courts are clearly erroneous. More importantly, the decisions are contrary to decisions of this Court.

3. Petitioner requests the Court to apply its decision in U.S. v. James Daniel and Austin v. U.S. to the issue in this case. It is undisputed that the petitioner repeatedly requested, but was denied, his Procedural Due Process hearing. Petitioner maintains that if such a hearing had been held the clouds of false and/or misinformation by the respondents would have been made clearer to the courts. Some examples:

(1) Comparative qualifications of Wrenn and Rogers (App K and L) could have been reviewed/discussed.

(2) The FOIA claim against the EEOC (App T) could have been examined and clarified.

(3) The facts relied on to show a conspiracy (App M-R) in all likelihood would have been accepted.

I. RES JUDICATA

1. As a basis for invoking "res judicata" for dismissing the petitioner's claims against the federal defendants, the District Court and the CA cite other FOIA claims and conspiracy claims he has filed in other federal courts. The courts conveniently ignored the restrictions of the FOIA. As a result the CA alleges "we find the appeal to be frivolous and brought for the purpose of harassment.." The CA cite no facts and/or lack of facts to support its allegation. More importantly, the CA did not cite how or on what basis it determined that the appeal is frivolous.

2. The lower, courts have failed and/or refused to demonstrate how other claims the petitioner has filed is somehow related to or similar to his claims against the federal defendants, and Vanderbilt University Hospital and its agent/legal

counsel (John Callison). The petitioner respectfully submits that the "other claims" are similar ONLY in that they were filed under the same statutory law (The FOIA). The courts are aware that the FOIA provides ONLY three places to file a claim: district where the requester resides or where the records are maintained, or Washington, DC. In the case at bar, believing that the records were in Nashville (Office of the EEOC or Vanderbilt) considering this is where the discriminatory practices occurred. the petitioner filed his complaint here. (NOTE: No claim involving the EEOC, DHHS, DOJ and Vanderbilt could have been filed in another court. That is why the claim was filed in Nashville AND more importantly why any attempte to show res judicata must be rejected).

3. Of particular concern in this case is the unarticulated suggestion by the courts that the FOIA and conspsiracy claims against the federal defendants and Vander-

bilt University Hospital were required to be or at least could have been filed with his other claims in other district courts. Such is totally irresponsible thinking, considering the restrictions imposed by the FOIA.

4. Res iudicata does not apply for two reasons: (1) petitioner had not as of the date this claim was filed received a decision on the merits of his claims, and (2) the respondents and the courts cite no example where the petitioner received a decision on the merits of the claims herein presented. Thus, the decision of the Sixth Circuit is contrary to decisions of this Court and the other courts of appeals. See, e.g., Harnett v. Billman, 800 F.2d 1313 (4th Cir. 1987). Also, Montana v. United States, 440 U.S. 147,153, 99 S. Ct. 970,973, 59 L.Ed.2d 210.

CONCLUSION

The Court should grant the writ of certiorari to review the actions of the lower courts, primarily because the decisions of the courts, if permitted to stand, will contravene decisions of this Court and the other courts of appeals. Moreover, if the sanctions imposed by the Sixth Circuit is permitted to stand it will discourage other citizen from challenging perceived unlawful employment practices or other unlawful acts because of the fear of retaliation by various federal agencies and the federal courts if they question an unsupported and/or unlawful decision by either of them.

Respectfully submitted,

Curtis L. Wrenn, Pro Se
95 Champion Street
West Carthage, NY 13619
Tel: (315) 493-6801

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Petitioner,

vs

VANDERBILT UNIVERSITY HOSPITAL; JOHN C. CALLISON, VANDERBILT UNIVERSITY HOSPITAL; SECRETARY, DEPARTMENT OF HEALTH & HUMAN SERVICES; CHAIRMAN, U.S. EEOC; & U. S. ATTORNEY GENERAL DEPARTMENT OF JUSTICE.

Respondents.

PETITIONER'S APPENDIXES

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
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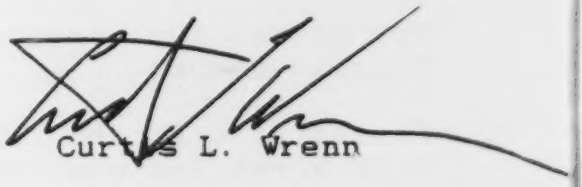

Curtis L. Wrenn

No. 93-5994

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CURTIS L. WRENN,	)	
Plaintiff-Appellant,	)	
v.	)	ORDER
VANDERBILT UNIVERSITY HOSPITAL; JOHN C. CALLISON; U.S. DEPARTMENT OF JUSTICE; SECRETARY OF HEALTH AND HUMAN SERVICES; EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	)	NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court. **This notice is to be prominently displayed if this decision is reproduced.**
Defendants-Appellees.	)	

BEFORE: KEITH and RYAN, Circuit Judges, and JOHNSTONE, Senior District Judge.*[1]

Curtis L. Wren, a pro se plaintiff, appeals a district court order dismissing his complaint and amended complaint brought under Titles VI and VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act (ADEA), the Freedom of Information Act (FOIA), and 42 U.S.C. SS1981, 1983, and 1985. The case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking monetary relief, Wrenn sued Vanderbilt University Hospital (Vanderbilt), alleging that he was denied employment because of his race and in retaliation for previous

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*The Honorable Edward H. Johnstone, Senior U. S. District Judge for the Western District of Kentucky, sitting by designation.

employment discrimination lawsuits filed against Vanderbilt. He further alleged that Vanderbilt had conspired since 1978 with the United States Department of Justice and with various unnamed public and private employers to violate his rights to equal employment because of his race. In an amended complaint, Wrenn named as additional defendants the Attorney General of the United States (USAG), the Secretary of the Department of Health and Human Services (HHS), the Chairman of the Equal Employment Opportunity Commission (EEOC), and the Assistant General Counsel for Vanderbilt University (Callison). He also added a claim under the Age Discrimination in Employment Act (ADEA) and complained that the federal defendants conspired to violate his rights by refusing to process and investigate his complaint, refusing to enforce equal employment law, and refusing to provide records and documents requested under the FOIA. Wrenn sought injunctive relief.

All defendants filed motions for summary judgment or to dismiss, which were apposed by Wrenn. Additionally, the EEOC sought a permanent injunction and sanctions against Wrenn. In a memorandum and order entered on June 15, 1993, the district court concluded that all of Wrenn's claims were meritless or barred by the doctrine of res judicata. The district court, accordingly, granted summary judgment for Vanderbilt and dismissed the claims against the remaining defendants. It declined to enter a permanent injunction, but ordered that no process should issue upon any future claim brought by Wrenn against the EEOC until such claim was reviewed by the district court. On appeal, Wrenn continues to argue the merits of his Title VII, ADEA,FOIA, and conspiracy claims. The HHS and USAG request sanctions pursuant to Fed. R. App. P. 38.

Upon review, we affirm the district court's order because there is no genuine issue of material fact and the

defendants are entitled to judgment as a matter of law. *See* Fed. R. Civ. P.56(c); *Canderm Pharmacal, Ltd. v. elder Pharmaceutical, Inc.*, 862 f.2d 597, 601 (6th Cir. 1988).

Wrenn has not raised on appeal his claims under Title VI, the Civil Rights Act of 1991, and 42 U.S.C. SS1981, 1983, and 1985. thus, they are considered abandoned and are not reviewable. *See Boyd v. Ford Motor Co.*, 948 F.2d 283, 284 (6th Cir. 1991), *cert. denied*, 112 S. Ct. 1481 (1992).

Wrenn has failed to prove that he was not selected by Vanderbilt for the position of Assistant Hospital Director for illegal reasons or that the defendants conspired to deny him equal employment opportunity. to establish a prima facia case of race or age discrimination, Wrenn was required to show that: (1) he was a member of a protected class, (2) he applied and was qualified for a job for which the employer was seeking applicants, (3) he was rejected despite his qualifications, and (4) the circumstances give rise to an

inference of discrimination. *See McDonnell Douglas Corp. v Green*, 411 U.S. 792, 802, (1973); *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 582 (6th Cir. 1992). While he can prove the first element of a prima facie case -- Wrenn is African American and was over the age of 40 at the time of his application -- he has utterly failed to prove that the circumstances give rise to an inference of discrimination. The position at issue was first offered to a black male. After he withdrew his name from consideration, the position was offered to a white female over the age of 40, who accepted it. These actions on the part of Vanderbilt belie any discriminatory motive. Thus, despite Wrenn's assertion that he was qualified for the position, he cannot satisfy the fourth element of a prima facie case.

Vanderbilt is also entitled to summary judgment on Wrenn's claim of retaliation. He has failed to refute the affidavits of the two Vanderbilt officials who screened the

applications, in which the declared that they had no knowledge of his prior Title VII actions against Vanderbilt.

Finally, Wrenn's vague allegations of a wide-ranging conspiracy are wholly conclusory and are thus insufficient to state a claim or withstand a motion for summary judgment. *See Mitchell*, 964 F.2d at 584-85; *McDonald v. Union Camp Corp.*, 898 F.2d 1155, 1162 (6th Cir. 1990); *Gutierrez v. Lynch*, 826 F.2d 1534, 1538-39 (6th Cir. 1987).

The district court also correctly dismissed Wrenn's claims against the federal defendants. Wrenn has raised the same allegations of conspiracy and refusal to enforce Title VII and the ADEA against these federal defendants in previous actions. *See, e.g., Wrenn v. Kemp*, No. 1:92-CV-0122 (N.D. Ohio Jan 3, 1992). The district court in *Wrenn v. Kemp* found that there is no private cause of action for the improper investigation or processing of a discrimination charge. A panel of this court affirmed the district court's decision.

Wrenn v. Kemp, No. 92-3513 (6th Cir. Nov. 24, 1992). Other circuits have come to the same conclusion. *See Scheerer v. Rose State College*, 950 F.2d 661, 663 (10th Cir. 1991), *cert denied*, 112 S. Ct. 2995 (1992); *Gillis v. United States Dep't of Health and Human Servs.*, 759 F.2d 565, 574 (6th Cir. 1985); *McCottrell v. EEOC*, 726 F.2d 350, 351 (7th Cir. 1984).

Thus, whether the issue is examined on the merits or determined as a matter of preclusion, the federal defendants are entitle to judgment regarding the alleged failure to properly investigate or enforce employment discrimination laws. Moreover, the conclusory nature of Wrenn's allegations, particularly in relation to the alleged conspiracy, make them insufficient to state a claim, as discussed above.

Finally, the district court did not err in concluding that the EEOC is entitled to judgment as a matter of law on the FOIA claim. The EEOC ultimately withheld only tow of the

documents requested by Wrenn. Those documents were properly withheld under 5 U.S.C. SS 552 (b)(5) and (b)(7)(c).

Accordingly, the district court's judgment, entered on June 15, 1993, is affirmed. Rule 9(b)(3), Rules of the sixth Circuit. Pursuant to Rule 38, Federal Rules of Appellate Procedure, we find this appeal to be frivolous and brought for the purpose of harassment, and we award double costs and reasonable attorney fees to each appellee in this appeal. The appellees shall file affidavits and other appropriate material with the Clerk within 14 days of the entry date of this order.

ENTERED BY ORDER OF THE COURT

/s/illegible
Clerk

Case No: 93-5994; 93-6181

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

ORDER

CURTIS L. WRENN

Plaintiff-Appellant

v.

VANDERBILT UNIVERSITY HOSPITAL; JOHN C. CALLISON; U.S. DEPARTMENT OF JUSTICE; SECRETARY OF HEALTH AND HUMAN SERVICES; EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Defendants - Appellees

BEFORE: KEITH and RYAN, Circuit Judges; JOHNSTONE, Senior District Judge.*

Upon consideration of the appellees' bills of cost submitted in the above cause,

*-----
The Honorable Edward H. Johnston, Senior U.S. District Judge for the Western District of Kentucky, sitting by designation.

It is ORDERED that costs shall be GRANTED in the amounts listed below shall be taxed against the appellant and included in the mandate:

VANDERBILT UNIVERSITY	**$ 1692.90**
EEOC	**$ 7598.20**
JANET RENO; HHS	**$4172.64**

ENTERED BY ORDER OF THE COURT

/s/Leonard Green
Leonard Green

Case No: 93-5994; 93-6181

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

ORDER

CURTIS L. WRENN

Plaintiff-Appellant

v.

VANDERBILT UNIVERSITY HOSPITAL; JOHN C. CALLISON; U.S. DEPARTMENT OF JUSTICE; SECRETARY OF HEALTH AND HUMAN SERVICES; EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Defendants - Appellees

BEFORE: KEITH and RYAN, Circuit Judges; JOHNSTONE, Senior District Judge.*

Upon consideration of the petition for rehearing submitted by the appellant,

*- - - - -
The Honorable Edward H. Johnstone, Senior U.S. Distr Judge for the Western District of Kentucky, sitting be designation.

IT is ORDERED that the petition for rehearing be and it hereby is rejected for filing due to exceeding the page limit.

ENTERED BY ORDER OF THE COURT

/s/illegible signature
Leonard Green, Clerk

Case No: 93-5994

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

O R D E R

CURTIS L. WRENN

Plaintiff-Appellant

v.

VANDERBILT UNIVERSITY HOSPITAL; JOHN C. CALLISON; U.S. DEPARTMENT OF JUSTICE; SECRETARY OF HEALTH AND HUMAN SERVICES; EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Defendants - Appellees

BEFORE: KEITH and RYAN, Circuit Judges; JOHNSTONE, Senior District Judge.*

Upon consideration of the appellant's petition for rehearing this Court's Order of March 14, 1994 allowing

*- - - - -
The Honorable Edward H. Johnstone, Senior U.S. District Judge for the Western District of Kentucky, sitting be designation.

double costs for the appellee,

IT is ORDERED that the petition for rehearing be, and it hereby is **DENIED.**.

ENTERED BY ORDER OF THE COURT

/s/illegible signature
Leonard Green, Clerk

APPENDIX
Page 1 of Pages

IN THE UNITED STATES DISTRICT COURT
THE MEDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CURTIS L. WRENN)
)
v.) NO. 3:91-1005
)
VANDERBILT UNIVERSITY)
HOSPITAL, et. al.)

MEMORANDUM

The plaintiff in the above styled case has filed a s
alleging that the defendants violated Title VII of the Civ
Rights Act of 1964, and the Age Discrimination in
Employment Act. Pending before the Court are motion
dismiss or, in the alternative for summary judgment filed
the defendant the Equal Employment Opportunity
Commission ("EEOC") through its Chairman Tony E.
Gallegos. For the reason stated below, the Court hereb
grants Vanderbilt's motion for summary judgment and th

EEOC's motion to dismiss.

BACKGROUND

The plaintiff applied for the position of Assistant Director of the Vanderbilt University Hospital. When the plaintiff was not granted an interview for the position, he charged Vanderbilt with discrimination. The plaintiff filed a complaint alleging race and age discrimination in violation of Title VII of the Civil Rights Act of 1964, and in violation of the Age Discrimination in Employment Act ("ADEA"). In his original complaint filed December 10, 1991, the plaintiff named Vanderbilt University Hospital as a defendant alleging that the hospital discriminately failed to hire him. On October 1, 1992, the plaintiff filed an amended complaint naming John C. Callison, individually and as Assistant General Counsel for Vanderbilt. The plaintiff further named the Department of Justice, the Department of Health and Human Services, and the EEOC and alleged that these agencies, together with the

defendant Callison, conspired to deprive him of his rights secured by the Constitution and the laws of the United States. In their Answers to the Complaint, the defendants denied all of the substantive allegations.

On September 30, 1992, Vanderbilt took the deposition of the plaintiff, and the plaintiff took the depositions of representatives of Vanderbilt, as well as the defendants Callison and Mr. Donald Hancock, the Associate General Counsel for Vanderbilt University.

Based upon the plaintiff's deposition, together with the exhibits and the record in this case, Vanderbilt and Callison have moved to dismiss or for summary judgment arguing that the plaintiff cannot establish the essential elements of his claims. Likewise, the defendant Tony E. Gallegos, Chairman of the EEOC, has also filed for dismissal of this case arguing that the plaintiff cannot prove the elements of his claim.

FACTS

Following the resignation of Ms. Sandra Randolph, Vanderbilt University Hospital began advertising for a replacement for her. Ms. Randolph held the position of Assistant Hospital Director. Vanderbilt received over one hundred applications including the plaintiff's. The plaintiff supplied Vanderbilt with his resume, college transcripts, a retirement form from the United States Army, a writing sample, and various certificates of training.

The applications were initially reviewed by Ms. Carrie Warring, then Administrative Resident in the Vanderbilt University Hospital and Ms. Janice Hallmark, then Director of Staffing and Recruitment. Ms. Warring and Ms. Hallmark compared each of the applicant's qualifications with the requirements for the position in an attempt to reduce the number of candidates to a more manageable number. The only information available to Ms. Warring and Ms. Hallmark was the information supplied by the applicants themselves.

(See Affidavits of Warring and Hallmark)

Applicants were eliminated based upon their lack o educational background for the position, or lack of relevan experience for the position. Applicants were also eliminate who, although they possessed the relevant experience, had had recent experience in the areas necessary for the positio Only those applicants whose applications and supporting information indicated the ;most recent and the most relevan experience survived this screening. Only 50 to 60 applican survived this initial screening. The plaintiff was not one of them and his application was not considered further.

The plaintiff's resume failed to indicate the length o service or the dates of his work history and showed little relevant experience.

During the next stage of the hiring process, Mr. Do Hancock, Director of Vanderbilt University Hospital, and other members of his staff reviewed the applicants who had

survived the first stage. The list was further narrowed to 14 viable candidates for the position. These candidates were then interviewed by telephone, after which time the list was narrowed to six candidates. These six were invited to Vanderbilt for personal interviews.

Following the personal interviews, Mr. Hancock offered the position to Mr. Gerald Russell, a black male. Mr. Russell, however, withdrew his name from consideration because his present employer offered him a promotion with a substantial increase in salary. The position was then offered to Ms. Charlotte Rogers, a female who at the time was over the age of 40.

The plaintiff was notified by letter dated November 26, 1990, that he did not receive the position because his qualifications did not match the specific requirements of the position.

On February 17, 1991, the plaintiff filed charges of

race and age discrimination and retaliation for having filed previous charges of discriminatory employment practices against Vanderbilt with the EEOC. The EEOC determined that no reasonable cause existed to believe that the plaintif allegations were true. The plaintiff then filed the present action.

SUMMARY JUDGMENT STANDARD

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment may be granted

> "if the pleading, depositions, answers to interrogatories, and admissions on file, together wit affidavits, if any, show that there is no genuine issu as to any material fact and that the moving party is entitled to judgment as a matter of law."

The Advisory Committee for the Federal Rules has noted that "The very mission of the summary judgment procedure is to pierce the pleading and to assess the proof order to see whether there is a genuine need for trial." Advisory Committee Notes on Rule 56, Federal Civil Judic

Procedure and Rules (West. Ed. 1990).

In Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S. Ct. 2505 (1986), the U.S. Supreme Court explained the District Court's function in ruling upon a motion for summary judgment:

> Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment shall be rendered forthwith if the pleading, depositions, answers to interrogatories, and admissions on file, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.
> By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be on genuine issue of material fact.
>
> As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.
>
> * * *
>
> More important for present purposes, summary judgment will not lie if the dispute about a material

> fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.
>
> * * *
>
> ... we are convinced that the inquiry involved in a ruling on a motion for summary judgment ... necessarily implicates the substantive evidentiary standard of proof that would apply at the trial on the merits. If the defendant in a run of the mill civil case moves for summary judgment..., on the lack of proof of a material fact, the judge must ask himself not whether he thinks the evidence unmistakably favors one side or the other but whether a fair minded jury could return a verdict for the plaintiff on the evidence presented. The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff. The judge's inquiry, therefore, unavoidably asks whether reasonable jurors could find by a preponderance of the evidence that the plaintiff is entitled to a verdict -- 'whether there is [evidence] upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed.'

477 U.S. at 247-8, 106 S.Ct. at 2509-12. (emphasis in original) (citations omitted).

The party that opposes the motion has the burden to

come forth with sufficient proof to support its claim, particularly when that party has had an opportunity to conduct discovery. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 2552 (1986). It is true, however, the "[i]n ruling on a motion for summary judgment, the court must construe the evidence in this most favorable light in favor of the party opposing the motion and against the movant. Further, the papers supporting the movant are closely scrutinized, whereas the opponent's are indulgently treated. It has been stated that: 'The purpose of the hearing on the motion for such a judgment is not to resolve factual issues. It is to determine whether there is any genuine issue of material fact in dispute...'" Bohn Aluminum & Brass Corp. v. Storm King Corp., 303 F.2d 425, 427 (6th Cir. 1962) (citations omitted). As the Sixth Circuit Court of Appeals stated recently:

> Summary judgment may only be granted when the pleading, depositions, answers to interrogatories,

> admissions and affidavits demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), Fed. R. Civ. P. All facts and inferences to be drawn therefrom must be read in a light most favorable to the party opposing the motion. Smith v. Hudson, 600 F.2d 60, 63 (6th Cir.) cart. denied, 444 U.S. 986 (1979).

Duchon v. Cajon Co., 791 F.2d 43, 46 (6th Cir. 1986) app. 840 F.2d 16 (6th Cir. 1988) (unpublished opinion).

The Supreme Court has defined a 'material issue of fact' as one "where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." Matsushita Electrical Industrial Co. v. Zenith Radio, 475 U.S. 574, 587, 106 S. Ct. 1348 (1986) (citations omitted).

In Street v. J.C. Bradford & Co., 886 F.2d 1472, 1478-80 (6th Cir. 1989), the Sixth Circuit discussed the trilogy of leading Supreme Court cases on summary judgment, and synthesized ten rules to guide the Circuit into the "new era" of summary judgment motions. J.C. Bradford, 886 F.2d at 1479-80. The Court of Appeals stated that "[t]he

respondent must address more than a scintilla of evidence to overcome the motions [and] ... must 'present affirmative evidence in order to defeat a properly supported motion for summary judgment.'" J.C. Bradford, 886 F.2d at 1479. In addition, the Court of Appeals warned that:

> The respondent must 'do more than simply show that there is some metaphysical doubt as to the material facts.' Further, '[w]here the record taken as a whole could not lead a rational trier of fact to find' for the respondent, the motion should be granted. The trial court has at least some discretion to determine whether the respondent's claim is 'implausible.'

Street v. J.C. Bradford & Co., 886 f.2d 1472, 1480. See also Hutt v. Gibson Fiber Glass Products No. 89-5731 (6th Cir. Filed September 19, 1990) ("A Court deciding a motion for summary judgment must determine 'whether the evidence presents a sufficient disagreement to require a submission to a jury or whether it is so one sided that one party must prevail as a matter of law." quoting Anderson v. Liberty Lobby, supra).

In a recent decision, the Court of Appeals further explained the District's role in evaluating the proof on a summary judgment motion:

> A district court is not required to speculate on which portion of the record the nonmoving party relies, nor is it obligated to wade through and search the entire record for some specific facts that might support the nonmoving party's claim. Rule 56 contemplates a limited marshalling of evidence, however, does not require the nonmoving party to "designate" facts by citing specific page numbers. Designate means simply "to point out the location of." Webster's Third New International Dictionary (1986).
>
> Of course, the designated portions of the record must be presented with enough specificity that the district court can readily identify the facts upon which the nonmoving party relies; but that need for specificity must be balanced against a party's need to be fairly appraised of how much specificity the district court requires. This notice can be adequately accomplished through a local court rule or a pretrial order.

InterRoyal Corp. v. Spoonseller, 889 F.2d 108, 111 (6th Cir. 1989) (citations omitted) cart. den. 110 S. Ct. 1839 (1990).

Here, the parties have given specific references to the proof upon which they rely, e.g., to "deposition excerpts" and

other documents.

Under these holdings, it appears that upon a motion for summary judgment, three questions are to be asked: (1) does the plaintiff present sufficient facts to establish all the elements of his claim? (2) are those facts sufficient to support a jury verdict or judgment? and (3) are there any material issues with respect to those facts?

DISCUSSION

Claims against Vanderbilt and Callison

In a employment discrimination action, courts apply the order and allocation of proof as set forth in McDonnel-Douglas Corp. Green, 411 U.S. 792 (1973). The plaintiff first bears the burden of presenting a prima facie case of discrimination. Upon presentation of a prima facie showing of discrimination, the burden shifts to the employer to articulate a legitimate nondiscriminatory reason for the adverse employment action. Upon the defendant

demonstrating a legitimate non-discriminatory reason, to prevail the plaintiff must demonstrate that the defendant's reason is pre-textual or not valid. In the event that the plaintiff cannot establish a prima facie case, or cannot show that the employer's reason is pre-textual or not credible, the defendant is entitled to judgment as a matter of law. See McDonald v. Union Camp Corp., 898 F.2d 1155, 1160 (6th Cir. 1990) (plaintiff making age discrimination claim carries the initial burden of proving by a preponderance of the evidence a prima facie case of age discrimination).

The plaintiff alleges that he was not hired because of his race (black) and age (70 at the time of application) and thus, was unlawfully discriminated against. To establish a prima facie case of race or age discrimination, a plaintiff must show: (1) membership in a protected class; (2) that he possessed qualifications to perform the requirements of the job; (3) that he was subjected to an adverse employment

decision; and, (4) that the circumstances of the adverse action give rise to an inference of discrimination. See Gagne v. Northwestern National Insurance Company, 881 F.2d 309, 313 (6th Cir. 1989); Simpson v. Midland Ross Corp., 823 F.2d 937, 940 (6th Cir. 1987); Blackwell v. Sun Electric Corp., 696 F.2d 1176, 1180-81 (6th Cir.1983).

While the plaintiff has shown that he is a member of the protected classes (he is black and over the age of 40), he has not adequately demonstrated that the remaining three factors are present. The position that is the subject of the present litigation is one which the plaintiff also applied for in 1983. at that time, the job of Assistant Hospital Director went to Ms. Randolph. The plaintiff sued Vanderbilt for failing to hire him alleging discrimination. The case was before Judge Wiseman who ruled that the plaintiff's employment history did not indicate that he was qualified for the position. [Wrenn slip op.] the plaintiff is back before the

federal district courts once again after making another unsuccessful bid for the position of Assistant Hospital Director following the resignation of Ms. Randolph. Under the principal of res judicata, Judge Wiseman's earlier finding that the plaintiff is not qualified prevents the plaintiff from asserting that he is under the present set of facts. Based upon a review of the record in this case and the plaintiff's credentials, the Court finds that the plaintiff has not established that he was qualified for the position. He has presented no new information regarding recent job responsibilities which would have made him qualified for the position applied for in 1990.

Even assuming that the plaintiff has established a prima facie case the plaintiff would still have to overcome any legitimate nondiscriminatory reason for not hiring him. Here, Vanderbilt asserts that the reason the plaintiff was not hired was because he did not possess the necessary criteria to be

considered for the position [namely prior related work experience]. The plaintiff has failed to present any evidence to the Court which would indicate that Vanderbilt's reason was merely pre-textual. an examination of the record in this case reveals that the position which the plaintiff sought required that the applicant have three to five years of progressive responsibilities in health care management. Vanderbilt also indicated a preference for experience in a teaching hospital. While the plaintiff did work for the University of Maryland's large teaching hospital, he held that position for only two years. Moreover, the plaintiff held that position more than 14 years ago and was fired. Additionally, the plaintiff's resume does not indicate that he has had any "progressive responsibilities in health care management" as was required by the position. The court, therefore, finds that the plaintiff cannot establish that he was qualified for the position and thus cannot establish a prima facie case against

the defendants Vanderbilt and Callison.

As for his claims of conspiracy, the Court finds no evidence to support such a finding. The plaintiff relies upon vague conclusory statements that Vanderbilt has conspired with other agencies in America to prevent his employment in health care. Such conclusory allegations are not sufficient to withstand a motion for summary judgment. See McDonald v. Union Camp Corp., 898 F.2d at 1162 (6th Cir. 1990).

In the light of the plaintiff's inability to support his allegations of discrimination and conspiracy, summary judgment is appropriate.

Claims Against the EEOC

The plaintiff has also alleged that certain federal agencies have conspired to deprive him of his constitutional and statutory rights with regard to seeking employment and refusing to process his complaints of employment discrimination. The plaintiff further alleges that the defendant

federal agencies illegally concealed their conspiracy by refusing to provide the plaintiff with records and other documents he requested. The plaintiff claims that the act of refusing him his request was a violation of the Freedom of Information Act (FOIA). The defendant, the EEOC and its Chairman, move for dismissal, or alternatively, for summary judgment. As grounds for their motion, the defendant argues that the plaintiff's claims of conspiracy should be denied on the grounds of res judicata. The EEOC argues that it has prevailed on virtually identical claims filed against it by the plaintiff on at least four prior occasions. The EEOC also argues that the plaintiff's claims involving a FOIA action are invalid. alternatively, the EEOC argues that if this court were to find that the plaintiff has articulated a cognizable claim under FOIA regarding the plaintiff's request for Vanderbilt University Hospital records, that the Chairman of the EEOC is not the proper party defendant.

The EEOC is also seeking a permanent injunction against the plaintiff from further abuse of administrative judicial processes and costs and attorneys fees.

The plaintiff has filed similar actions against the EEOC in a number of circuits.[2] Among those circuits is the Sixth Circuit where plaintiff filed a complaint in the Northern

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[2]Wrenn v. Kemp, et al., No. 90-1063 (D.D.C) (the plaintiff filed a complaint naming the EEOC and the Department of Health and Human Services (HHS) as defendants alleging that these agencies had violated the FOIA and had failed to implement certain provisions of the Civil Rights Act of 1964 by refusing to investigate complaints. The District Court granted the defendants' motion for summary judgment. On Appeal, the District of Columbia Circuit affirmed except for two issues under the plaintiff's FOIA claim; Wrenn v. Sullivan, et al., No. R-91-2460 (D.Md) (the plaintiff filed for declaratory and injunctive relief as well as monetary damages for defendants' alleged denial of his rights. The District Court granted the defendants' motion for summary judgment finding that the plaintiff had litigated the same issues before the District Court for the District of Columbia); Wrenn v. Rosa, et al., No. 92-CV-2091 (LBS) (S.D.N.Y.) (the plaintiff filed a complaint against the New York State Division of Human Rights, EEOC and HHS containing general allegations of a conspiracy to violate his constitutional rights. The District Court dismissed his complaint in its entirety.)

District of Ohio alleging that the EEOC had conspired against him by refusing to process or investigate the plaintiff's charges of discrimination. Wrenn v. Kemp, No. 1:92 CV 0133 (N.D. Ohio) (Defendant's Exhibit !!). The district court granted a summary judgment for the EEOC. On appeal, the Sixth Circuit affirmed the lower court's judgment finding that the plaintiff had failed to state a claim. (Wrenn v. Kemp, No. 92-3513 Slip op. (6th Cir. Nov. 24, 1992) defendant's exhibit no. 13)

Upon review of these earlier claims and the plaintiff's present claims, the Court finds that the plaintiff's claims of conspiracy on the part of the EEOC are without merit and are barred by the doctrine of res judicata.

Likewise, the Court does not find that the plaintiff has stated a viable claim under the FOIA. The plaintiff requested a copy of the charge file in Wrenn v. Vanderbilt University Hospital. the Regional Attorney of the EEOC Memphis

District Office responded to the plaintiff's request by granting it in part and denying it in part. The Regional Attorney withheld four documents from the charge file. The plaintiff appealed to the Office of Legal Counsel which responded by denying in part and granting in part the plaintiff's request whereupon the plaintiff received all but two of the documents he requested. The documents withheld were the investigator's Memorandum and a computer printout. The documents withheld contained investigative information used by the EEOC in making a determination of the charge. The EEOC withheld the Investigator' Memorandum based upon a determination that they came within the fifth exemption to the FOIA, 5 U.S.C. SS552 (b)(5), as an inter-agency pre-decisional, deliberative document.

The computer printout withheld from the plaintiff contained a partial listing of charges in the EEOC' Charge Data System. the printout contained information regarding a

charging party's name and other personal information including the codes indicating the nature of the charge. The EEOC argues that this computer printout was rightfully withheld because under Title VI, such information is required to be withheld to protect the privacy of a charging party. The FOIA also provides exemptions for such information under the third and seventh exemptions to the Act, 5 U.S.C. SS552 (b)(3) and (7)(C).

In support of their request for injunctive relief and the imposition of sanctions, the EEOC argues that the handling of the plaintiff's numerous complaints with the EEOC has cost well over $300,000. Moreover, the plaintiff's complaints are often vexatious or frivolous costing not only in money but in time spent handling them.

The imposition of an injunction barring a litigant is not unheard of. the plaintiff is one of few individuals barred from filing in forma pauperis petitions with the United States

Supreme Court. Wrenn v. Benson, 490 U.S. 89, 89 n. 1, 109 S. Ct. 1629 (1989).

Other courts have also imposed sanctions and injunctions on the plaintiff for instituting frivolous litigation.[2] In so doing the courts send a message that abuse of the administrative and judicial process will not be tolerated. The Court, however, is not willing to prevent the plaintiff form ever filing another claim. Such an injunction, the Court finds, would be to great an impairment upon the plaintiff's access to the courts for redress of alleged grievances. Instead, the Court ORDERS that no process shall issue upon further claims brought by the plaintiff against the EEOC until the Court has had an opportunity to review them. any documents submitted by the plaintiff will be stamped "Received" and will not be stamped "Filed" until review by the Court.

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[2]See cases on pp. 10-12 of the EEOC's brief and give a brief rundown of the plaintiffs sanctions and injunctions

CONCLUSION

Based upon the findings herein, the Court hereby GRANTS the motion for summary judgment filed by the defendants Vanderbilt and Callison. The Court also GRANTS the EEOC's motion to dismiss all of the plaintiff's claims against it and Dismisses all other claims against the remaining defendants. The Court, however, DENIES the EEOC's motion for injunctive relief but GRANTS their motion for attorney's fees and costs. An affidavit setting forth reasonable fees and costs should be submitted separately to the Court.

There being no other matters remaining, this case is DISMISSED. An Order consistent with the findings herein is submitted contemporaneously.

Entered this the 10th day of June, 1993.

/s/John T. Nixon
JOHN T. NIXON, CHIEF JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CURTIS L. WRENN	)	
	)	
vs.	)	NO. 3:91-1005
	)	
VANDERBILT UNIVERSITY HOSPITAL, et al.	)	

ORDER

Pending before the Court in the above styled case are Motions to Dismiss, or alternatively for summary judgments filed by the respective defendants. As grounds for their motion, the defendants argue that the plaintiff has failed to prove his case.

For the reasons set forth in the contemporaneously filed Memorandum, the Court GRANTS the defendant Vanderbilt University Hospital's motion for summary judgment. The Court GRANTS the defendant Equal Employment Opportunity Commission's motion to dismiss.

The Court further ORDERS that no process shall

issue upon further claims brought by the plaintiff against the EEOC until the court has had an opportunity to review them. The Clerk shall stamp all further documents as "Received". documents will not be stamped"Filed" until they have been reviewed.

There being no other matters in this case it is DISMISSED.

Entered this the 10th day of June, 1993.

/s/John T. Nixon
JOHN T. NIXON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case Number: 93-5994

Case Name: Curtis L. Wrenn v. Vanderbilt Hospital, et al

PRO SE APPELLANT'S BRIEF

Directions: Answer the following questions about the appeal to the best of your ability. Use additional sheets of paper, if necessary, not to exceed 50 pages; doubled-spaced if typed. You need not limit your brief solely to this form, but you should be certain that the document you file contains answers to the questions below. The Court prefers short and direct statements.

Within 28 days you should return your completed brief to:

The Office of the Clerk
United States Court of Appeals, Sixth Circuit
538 U. S. Post Office & Courthouse Building
Cincinnati, Ohio 45202-3988

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(1) Did the District Court fail to consider important grounds for relief? Yes If so, what grounds?

Title VII, ADEA and FOIA. See continuation sheet

(2) Did the District Court incorrectly decide the facts? Yes If so, what facts?

See continuation sheet

(3) Do you think the District Court applied the wrong law? Yes If so, what law do you want applied?

Rule 56 FRCP, Title VII, and FOIA. See Continuation sheet.

(4) Do you feel that there are any other reasons why the District Court's judgment was wrong? Yes If so, what are they?

See continuation sheet

(5) What action do you want the Court to take in this case?

Remand to District Court.
See continuation sheet.

(6) Do you think that this Court should hear oral argument in this case? Yes If So, why do you think so?

See continuation sheet.

I certify that a copy of this brief was sent to opposing counsel via U. S. Mail on the 25th day of August, 1993.

/s/Curtis L. Wrenn
Signature (Notary not required)

Case No.93-5994
Wrenn v. Vanderbilt, et al
District Court No 91-01005

PRO SE APPELLANT'S BRIEF
(Continuation Sheet)

(1) Did the District court fail to consider important grounds for relief. Yes.

The District Court failed to consider that the plaintiff was entitled to relief under Title VII, the ADEA and the FOIA.

(2) Did the District Court incorrectly decide the facts?

a. The District Court failed to consider the significant facts submitted by the appellant in opposition to each defendant's motion for summary judgment. More specifically, the defendants did not clearly establish that there were no genuine issues for trial. The following issues are submitted for this Court's consideration and review:

(1) Whether the person hired by Defendant Vanderbilt was more qualified than the appellant.

(2) Whether the federal defendants have

conspired with other federal agencies and public and private employers to deprive the appellant of equal employment opportunity. Moreover, whether there is a conspiracy to deprive him of the right to seek legal redress against those who denied him employment.

(3) Whether the federal defendants have unlawfully denied the appellant information, records, documents and things which he requested under the FOIA.

(4) Whether the defendants, by depriving the appellant information under the FOIA, have deprived him of the right to seek information to comply with the provisions of Rule 11 FRCP (the "reasonable inquiry" requirement mandated by that Rule.

b. The District Court either failed to consider that the appellant was more qualified than the person hired by Defendant Vanderbilt or it improperly weighed the evidence.

(3) Do you think the District Court applied the wrong law?

a. The court failed to consider the requirement of Fed. R. Civ. P. 5(c). In this case the defendants did not meet their burden of production by showing the absence of a genuine issue of fact. See, e.g., Washington Post Co. v. U. S. Dept. of Health and Human Services, 865 F.2d 320, 325 (D.C. Cir. 1989), quoting Anderson v. Liberty Lobby, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). courts do not "weigh the evidence and determine the truth of the matter. "Id., 477 U.S. at 249.

b. Title VII (disparate treatment). The District Court ignored the fact that disparate treatment is said to define a situation where the employer simply treats some people less favorably than others because of their race and/or age. In this case the appellant has been repeatedly denied equal employment opportunity. In over five cases, despite being more qualified than other applicants, he was not even interviewed for the positions which he applied. See e.g.,

Wright v. National Archives and Records Service, 609 f.2d 702, 711 (4th Cir. 1979), quoting from International Brotherhood of Teamsters v. United States, 431 U.S. 324, 335 n, 15, 97 S. Ct. 1843, 1854 n 15,52 L.Ed.2d 396 (1977).

c. Freedom of Information Act (FOIA). The District Court failed to consider that the records, documents and information the appellant requested of the federal defendants were not withheld for a legitimate reason. More importantly, NO court has rendered a decision regarding the merits of appellant's request for information under the FOIA. See, e.g., Shaw v FBI, (1985, DC Dist col) 604 F. Supp 342 (Purpose of FOIA is to increase citizen access to government records and burden is on government to prove that document is exempt from disclosure); Jordan v. U.S. Dept. of Justice (1978) app DC 144, 519 F2d 753 (FOIA establishes statutory presumption that all federal records are available); Mead Data Cent., Inc. v. United States Dept. of Air Force (1977) 184

App DC 350, 566 F2 242 (Agency cannot show that withheld material is exempt form disclosure by sweeping and conclusory affidavits); and Vaughn v. U.S. 936 F2d 862, 869 (6th Cir. 1991):

> "... in instances where it is determined that records do exist, the District Court must do more to assure itself of the factual basis and bona fides of the agency's claim of exemption than rely solely upon an affidavit."
>
> - and -
>
> "... a court must have sufficiently detailed information regarding the contents of withheld documents along with reasoning for the application of specific FOIA exemptions to enable the court to make an independent assessment of both the contents of the documents in issue and the applicability of any asserted exemption(s).

Appellant's FOIA claim turns on the fact that the federal defendants have not met the test promulgated by the Supreme Court concerning the exemption of "Deliberative Process Privilege." The self-serving conclusory affidavits of the defendants are clearly not sufficient to explain why the

information requested by the appellant is somehow exempted from disclosure. That is, the defendants have not establish that the information the appellant requested is both "pre-decisional" and "deliberative". See, e.g., National Labor Relations board v. Sears, Roebuck and Co., 421 U.S. 132, 149, 95 S. Ct. 1504, 1515, 44 L1.Ed2d 29 (1975); United States Dept. of Justice v. Julian, 486 U.S. 1, 108 S. Ct. 1606, 100 L.Ed.2d 1 (1988). See also, Wolfe v. Department of Health and Human Services, 889 F.2d 768, 774 (DC Cir. 1988) (en banc) (citing Mink, 410 U.S. 73, 93, S.Ct. at 827). Also see, Schell v. United States Department of Health and Human Services, 843 f.2d 933 (10th Cir. 1988) (quoting Sears, 421 U.S. at 151, 95 S. Ct. at 1516).

(4) Do you feel there are any other reasons ...? Yes

This case clearly demonstrates that the District court was unduly influenced by the actions of the United States Attorney, a pattern which has been repeated throughout this

country. Of particular concern in this case is the action of federal agencies to deprive the appellant of employment and the right to vindicate his civil rights. Instructive is Greene v. McElroy, 360 U.S. 474 (1959); Merritt v. Mackey, No 85-4111, CA 9th cir, September 16, 1987, 56 LW 2179.

(5) What action do you want the Court to take?

Remand the case to the District Court and require that court to hold a hearing to decide the merits of the appellant's claims.

(6) Do you think that this Court should hear oral argument?

It is absolutely essential that oral argument be heard by the Court. The reason being, since at least 1981 the United States Attorney, in concert with federal agencies and private and public employers, have conspired to deprive the appellant of the right to equal employment and the right to vindicate his legal and civil rights against those who have unlawfully denied him employment.

Respectfully submitted,

/s/Curtis L. Wrenn
Curtis L. Wrenn, Pro Se
95 Champion Street
West Carthage, NY 13619
Tel: (315) 493-4028

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed on August 25, 1993 to Tim K. Garrett, Michael L. Roden, and Kathleen Oram, via first class U. S. Mail, postage prepaid.

/s/Curtis L. Wrenn
Curtis L. Wrenn

ADDENDUM

The appellant will include at least the following record parts in his joint appendix:

a. Plaintiff's resume

b. Memorandum USDC, June 15, 1993

c. Plaintiff's First Amended Complaint

d. Plaintiff's Memorandum in Opposition to HHS

e. Plaintiff's Opposition to EEOC's Motion

f. Plaintiff's FOIA requests

g. Plaintiff's Opposition to Motion for Sum Judge.

/s/Curtis L. Wrenn
Curtis L. Wrenn

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DOCKET NO. 93-6181
93-5994

CURTIS L. WRENN,

Plaintiff-Appellant

VS

VANDERBILT UNIVERSITY
HOSPITAL ET AL.,

Defendants-Appellees.

REPLY BRIEF OF PLAINTIFF-APPELLANT

CURTIS L. WRENN, PRO SE
95 Champion Street
West Carthage, NY 13619
Tel: (315) 493-4028

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STATEMENT OF ISSUES

I. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION IN GRANTING SUMMARY JUDGMENT TO THE DEFENDANT VANDERBILT ALLEGEDLY BECAUSE THE PLAINTIFF-APPELLANT DID NOT DEMONSTRATE THAT HE MET THE STATED QUALIFICATIONS FOR THE POSITION OF ASSISTANT HOSPITAL DIRECTOR

II. WHETHER THE EEOC PROVIDED LEGITIMATE JUSTIFICATION FOR ITS REFUSAL TO DISCLOSE INFORMATION FROM ITS SYSTEM OF RECORDS WHICH THE PLAINTIFF-APPELLANT REQUESTED UNDER THE FREEDOM OF INFORMATION ACT, REGARDING DOCUMENTS, RECORDS AND THING WHICH THE EEOC COMPILED IN CONNECTION WITH ITS INVESTIGATION OF THE PLAINTIFF'S CHARGE OF UNLAWFUL

EMPLOYMENT DISCRIMINATION AGAINST THE VANDERBILT HOSPITAL AND 100 OTHER CHARGES ALLEGEDLY FILED BY HIM IN THE NASHVILLE DISTRICT.

III. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT IMPOSED COSTS/SANCTIONS ON THE PLAINTIFF-APPELLANT BECAUSE OF HIS EFFORTS TO OBTAIN INFORMATION, UNDER THE FREEDOM OF INFORMATION ACT, FROM THE EEOC WHICH THAT FEDERAL AGENCY ADMITS THAT IT HAS AND/OR MAINTAINS IN ITS SYSTEM OF RECORDS BUT REFUSES TO DISCLOSE SUCH INFORMATION TO HIM.

I. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION IN GRANTING SUMMARY JUDGMENT TO THE DEFENDANT VANDERBILT

1. The District Court decided, among other things, that "the plaintiff resume does not indicate that he has had any "progressive responsibilities in health care management." The "facts" articulated by the District Court are not supported by the following positions held by the appellant during his employment in health care management:

Administrator - 25-bed acute care urban hospital

Administrative Residency - 860+ bed medical center

Personnel Director - 860+ bed medical center

Associate Director - 810 bed teaching hospital

Executive Director - 460 bed psychiatric hospital

Executive Director - 510 bed psychiatric hospital

Executive Director - Ambulatory Health Care Center

Health Systems Specialist - United States Army.

2. The District Court's statements concerning the appellant's alleged lack of qualifications for the position which he applied is not supported by any facts of records.

Moreover, the District Court's attempts to mask its unfounded decision with reference to the same position the appellant applied for in 1983, must also fail. Of particular significance in this case is the court's reference at page two to the resignation of Sandra Randolph. Ms. Randolph, a former student (the appellant was her preceptor at the University of Maryland) of Wrenn, was hired because she was more qualified than the appellant. Of particular concern in this case is the question of how the appellant was found to be qualified for a higher position at Vanderbilt (Associate Director in 1978) but is not qualified for the position of Assistant Director in 1993.

3. The District Court, while alleging that the appellant was not qualified, has not articulated any information regarding the employer's basis for the hiring of the successful applicant. See Appendix B(7), esp. Exhibits A and B. Thus this case turns on the relative qualifications of the two applicants: the appellant who has extensive experience in health care management and the successful

applicant who, according to her resume has had NO such health care management experience.

4. The appellee has failed to adduce any reason or argument to rebut the appellant's demonstration that the District Court clearly erred in determining that the appellant did not present a prima facie case because he was not qualified. The facts of record clearly demonstrates that the appellant met the employer's stated requirements for the position at issue.

5. It is respectfully submitted that the District Court's determination that the appellant failed to establish a prima face case is clearly erroneous.

6. Summary judgment was not appropriate in this case because, among other things, there is the issue of the relative qualifications of the appellant compared with those of the successful applicant. Thus there remains questions of facts regarding their qualifications. See, e.g., By-Prod Corp. v. Armen-Berry Co., 668 F.2d 956 (7th Cir. 1982). See also, Lujan v. National Wildlife Fed'n, 497 U.S. 871,110 S. Ct.

3177, 111 L.Ed. 2d 695 (1990).

7. The appellant argued that he is more qualified than the successful applicant. The District Court's failure to address the qualifications of the successful applicant, while maintaining that the appellant was not qualified is a clear abuse of discretion. The question: Did District Court find that the successful applicant was qualified? If so, why is it the court did not articulate its findings? In such a case, and in the absence of such a decision, appellant's version of the facts must be accepted, and all disputed matters resolved in his favor. United States v. Dievold, 369 U.S. 654, 655 82 S. Ct. 993, 81 L. Ed. 2d 176 (1962).

8. In its broadest scope, the summary judgment procedure is in the nature of a pretrial inquiry, brought on by motion of either a claimant or a defending party, for a favorable determination that a trial is unnecessary because there is no genuine issue as to any material fact, and that on the established facts the movant is entitled to judgment as a matter of law. See, e.g., Masson V. New Yorker Magazine,

Inc., 111 S. Ct. 2419, 115 L. Ed. 2d 447 (1991). It is not the function of the trial court in considering summary judgment to resolve any genuine factual issue. For example, to hold that the appellant was not qualified and while not considering the qualifications of the successful applicant is fact-specific, the District Court deprived the appellant of the opportunity to show that his qualifications exceeded those of the person hired. See, e.g., Southwest Marine, Inc. v. Gizon, 112 S. Ct. 486 (1991). This is especially true when there are facts which different inferences might be drawn by reasonable minds. Sankovich v. Life Ins. Co. on N. Am., 638 F.2d 136 (9th Cir. 1981).

9. This case turns on the abuse of discretion by the District Court in a case involving a well established principle that summary judgment is generally inappropriate in cases involving questions of motive or intent, i.e. the motive or intent of the Vanderbilt Hospital in denying the appellant employment for ever position which he applied, continuing since at least 1978. See, e.g., Conrad v. Delta Air Lines, Inc.,

494, F.2d 914, 919 (7th Cir. 1974). Moreover, courts do not, as was done in this case, weight the evidence and determine the truth of the matter at issue. Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 250 (1986).

10. In summary, all of the evidence before the Court on a summary judgment motion must be construed in the light most favorable to the non-moving party. See, e.g., Smith v. Hudson, 600 F.2d 60 (6th Cir. 1979) cert. dismissed 444 U.S. 986 (1979). Board of Education Cincinnati v. Department of H.E.W., 532 F.2d 1070 (6th Cir. 1976).

11. It is clear that the burden is on the moving party seeking summary judgment to clearly establish the non-existence of any material issue of fact. See, e.g., United States v. Article of Device, 527 F.2d 1008, 1011 (6th Cir. 1976. In applying that standard, this Court has further held that the evidence supporting the motion will be "closely scrutinized" while that of the opposing party should be "indulgently treated". Bohn Aluminum & Brass Corp. v. Storm King, Corp., 303 F.2d 425, 427 (6th Cir. 1962).

12. Finally, where conflicting inferences may be drawn from the evidence before the court on a motion for summary judgment, the court must draw those inferences against the movant and in favor of the not-movant. United States v. Diebold: Addickes v. S.H. Kress & Co., 398 U.S. 144, 90 S. Ct. 1598, 26 L.E. 2d 142 (1970). These standards were not adhered to by the District Court. The District Court's granting of summary judgment in favor of the defendant-appellees was clearly erroneous. Accordingly, this Court should vacate and remand and/or reverse.

II. WHETHER THE EEOC PROVIDED LEGITIMATE JUSTIFICATION FOR ITS REFUSAL TO DISCLOSE INFORMATION REQUESTED BY THE APPELLANT UNDER THE FREEDOM OF INFORMATION ACT

1. The FOIA (5 USC552(a)(3) provides:

> "An agency, upon request, must make its records "promptly available to any person" requesting them, provided the request "reasonably describes" the records sought."
>
> - and -
>
> "When an administrative appeal is denied, a requester has the right to appeal the denial in court."

- and -

> An FOIA appeal can be filed in the United States District Court in the district where the requester lives. The requester can also file in the district where the documents are located or in Washington, D.C.

- and -

> "When a requester goes to court, "the burden of justifying the withholding of documents is on the government."

See, e.g., Dept. of Justice v. Reporters, Cert. to CA DC Sup Ct Case No 87-1379 (Mar 1989). See also Appendix B and B(1) through B(5). This court is being asked to bring to a close the continuing denial of information the appellant has requested from the EEOC concerning 100 charges the EEOC alleges he filed in the Nashville District. Moreover, the court is asked to bring to a close the EEOC's continuing use of its own rules to deprive the appellant of rights, privileges and immunities secured by the Constitution (esp. the First and Fourteenth Amendments) and laws (esp. The Equal Employment Opportunity Act and the Age Discrimination in Employment Act) of the United States. See, e.g., Mohasco

Corporation v. Silver, 447 U.S. 807, 65 L. Ed 532, 100 S. Ct. 2486 (1980) where the Court noted: "The Equal Employment Opportunity Commission Cannot adopt regulations that are inconsistent with its statutory mandate under the Civil Rights Act of 1964 ...".

2. The FOIA issue in this case concerns a statement by the EEOC that the appellant filed 100 charges in "this district". The appellant submitted a legitimate request to the EEOC for information concerning those charges. The request was denied and the appellant filed a complaint in the district court, under that provisions of the FOIA which clearly states: "When an administrative appeal is denied, a requester has the RIGHT (emphasis added) to appeal the denial in court."

3. The EEOC has acknowledged that it refused disclose information to the appellant concerning his charge against the Vanderbilt University Hospital as well as 100 other charges. By acknowledging that the information exists, the EEOC is obligated to provide the requested information under the FOIA. See, e.g., Vaughn v. U.S. 936 F.2d 862,

869 (6th Cir. 1991):

> "... in instances where it is determined that records do exist, the District Court must do more to assure itself of the factual basis and bona fides of the agency's claim of exemption than rely solely upon an affidavit."
>
> - and -
>
> "... a court must have sufficiently detailed information regarding the contents of withheld documents along with reasoning for the application of specific FOIA exemptions to enable the court to make an independent assessment of both the contents of the documents in issue and the applicability of any asserted exemption(s)."

4. the essence of the appellant's FOIA argument is that the selfserving conclusory statements of the EEOC are clearly not sufficient to explain why the information requested by him is somehow exempted from disclosure and/or why he is not entitled to pursue the denial of information in federal court. See, e.g., National Labor Relations Board v. Sears, Roebuck and Co., 421 U.S. 132, 149, 95 S. Ct. 1504, 1515, 44L.Ed. 2d 29 (1975); United States Dept. of Justice v. Julian, 486 U.S. 1, 108 S. Ct. 1606, 100 L.Ed. 2d 1 (1988). See also, Wolfe v. Department of Health and Human

Services, 889 F.2d 768, 774 (DC Cir. 1988) (en banc) (citing Mink, 410 U.S. 73, 93 S. Ct. at 827). Also see, Schell v. United States Department of Health and Human Services, 843 F.2d 933 (10th Cir. 1988) (quoting Sears, 421 U.S. at 151, 95 S. Ct. at 1516).

5. Appellant's argument turns on the issue concerning whether the District Court abused its discretion in apparently refusing to consider important facts in the case. See Appellant's FOIA request at Appendix B(2) through B(5). See also, Ray v. U. S. Dept of Justice, 908 F.2d 1549, 1555 (11th Cir. 1990):

> "Because FOIA is a "broad disclosure statute which evidence a 'strong public policy in favor of public access to information in the possession of federal agencies'" Cochran v. United States, v. federal Bureau of Investigation, 658 f.2d 71, 73 (2d Cir. 1981), the disclosure requirements of FOIA must be construed broadly and the exceptions narrowly, ... Documents are presumed to be subject to disclosure; when the government seeks to invoke an exemption, it bears the burden of proving that the exemption applies."

6. The Supreme Court has made clear that the FOIA's purpose is to provide the public with a mean of

learning what its government is up to. U. s. Dept. of Justice v. Reporters Committee, 489 U.S. 749, 109 S. Ct. 1468, 1481, 103 L.Ed. 2d 774 (1989).

7. The focus of the FOIA is information, not documents, and agency cannot justify withholding entire document simply by showing that it contains some exempt material. The FOIA expressly requires disclosure of any reasonably segregable portion of public record. See, e.g., Norther California Police Practices Project v. Craig (1979, 3d Dist) 90 Cal App 3d 116, 153 Cal Rptr 173.

8. This case turns on the question regarding whether the EEOC met its burden concerning its claimed exemptions, esp. the "invasion of the personal privacy of each charging party" exemption. In this case there is only one charging party - the plaintiff who requested information concerning charges HE FILED and NO information regarding charges filed by others. the burden of proof is on agency claiming exemption from statutorily imposed duty to disclose information, and court must apply that burden with awareness

that plaintiff is at distinct disadvantage in attempting to controvert agency's claims. See, e.g., United States v. Hoyos (1978, CA9 Ariz) 573 F2d 111, 3 Fed Rules Evid Serv 776.

9. In order to establish that documents are exempt from disclosure under FOIA, the EEOC bears burden of showing that each document (in this case each of the 100+ charges of unlawful employment discrimination which the EEOC alleges that the appellant filed in this district) is wholly exempt. Dames & Moore v. United States Dept. of Treasury 91982, DC Cal)544 F Supp 94.

10. this court is being asked to decide whether the District Court abused its discretion in deciding in the appellee's favor in response to appellant's FOIA claims. In reviewing the case the court is asked to decide whether the unauthorized disclosures concerning charges the appellant filed with the EEOC constitutes a waiver of EEOC's right to assert deliberative process privilege under 5 USC 552(b)(5). Factors that should be weighed to determine whether document is protected by deliberative process privilege

include whether document is deliberative, whether document is predecisional, whether document is so candid and personal in nature that public disclosure would stifle honest and frank communication in future, and whether document is recommendation or in draft that will become final document; only deliberative, predecisional inter-agency or intra-agency memoranda come within scope of privilege. See Shell Oil Co. v. IRS, (1991, DC Del) 772 f. Supp. 202; The Gazette Newspapers (DOE/OHA, October 31, 1991) Case No. LFA-0149). Moreover, the EEOC bears burden of proving what deliberative process is involved and what role document plays in that process in order to exempt document. King v. IRS, (CA7 ILL) 684 f.2d 517.

11. The FOIA establishes statutory presumption that all federal records are available to any person, and this presumption is rebutted only be evidence presented by agency that item sought is exempt from disclosure under one of nine enumerated exemptions; to meet its burden, agency must identify specific statutory exemption relied upon and

demonstrate that exemption applies to documents in question (the 100+ charges allegedly filed by the appellant with the EEOC). Jordan v. United States Dept of Justice (1978) 192 App DC 144, 591 F2d 753.

12. The EEOC cannot show that withheld material is exempt from disclosure by sweeping and conclusory affidavits together with submission of withheld material for in camera review: agency must also submit relatively detailed justification, specifically, identifying reasons that particular exemptions are relevant and conrelating those claims with particular parts of withheld documents to which they apply. Mead Data Cent., Inc. v. United States Dept. of Air Force (1977) 184 App DC 350, 566 F2d 242.

13. The EEOC has not demonstrated its entitlement to summary dismissal/judgment. Summary judgment in favor of agency is proper only where agency proves that each document (in this case the 100+ charges) that falls within class requested either has been produced, is unidentifiable, or is wholly exempt from Freedom of Information Act's

inspection requirements. National Cable Television Asso. v. Federal Communication Com., (1973) 156 App DC 91, 479 F2d 183.

14. The EEOC has not proven that no substantial material facts are in dispute. More specifically, the agency has not established the status and/or disposition of the 100 charges allegedly filed by the appellant. Moreover, the EEOC has not disclosed the requested information nor has it proven that the information concerning the charge filed by the appellant against Vanderbilt Hospital or the 100 other charges filed by him are somehow exempt from disclosure. Court may grant summary judgment only if it is satisfied that moving party has proven that no substantial material facts were in dispute that it is entitled to judgment as matter of law. Schlesinger v. CIA (1984, DC Dist Col) 591 F. Supp 60. the substantial material fact at issue is the information contained in the system of records concerning the "list of 100 charges". Given that the list may be computerized, the FOIA applies to computer tapes to same extent it applies to any other

documents. computer stored records, whether stored in central processing unit, on magnetic tape or in some other form, are still records for purposes of FOIA. Yeager v. Drug Enforcement Admin. 91982) 220 App DC 1, 678 F2d 315, 8 Media L R 1959.

15. This case is a clear example of the abuse of discretion by the District Court. That is, the court failed to direct the disclosure of significant important information which the appellant requested from the EEOC Moreover, the court failed to examine important facts to justify its decision to dismiss the EEOC. Courts were given authority under 5 USC 5529a)(3) to review de novo any denial of access in order that ultimate decision as to propriety of agency's action is made by court and to prevent review from becoming meaningless judicial sanctioning of agency's discretion. See, e.g., Ray v. Turner (1978) 190 App Dc 290, 587 F2d 1187, on remand (DC Dist Col) 468 F Supp 730.

16. Based on the foregoing, the decision of the District Court is clearly erroneous, in that the decision at

Appendix C is not supported by the facts of record. See Anderson v. City of Bessemer City 470 U.S.---(1985); Pullman-Standard v. Swint, 456 U.S. 273 (1982); United States v. United States Gypsum Co., 333 U.S. 364 (1948). See also Appendix B and B(1) through B(5).

17. There is a major issue which the court failed to address: That is whether the EEOC, in an attempt to coverup its activities against the appellant has destroyed the appellant's charges, and if so whether the destruction occurred before or AFTER he filed his FOIA requests. More importantly, which charges were destroyed, when, by whom and for what lawful reasons. Of particular concern is that the EEOC has admitted to numerous examples of charges "inadvertently being destroyed". the question is why ANY of the charges were destroyed. The FOIA provides:

> "A requester who delays filing an appeal runs the risk that the documents could be destroyed. However, as long as an agency is considering a request or an appeal, the agency MUST (emphasis added) preserve the documents."

18. This court is being asked to review the practices

of the EEOC to deprive the plaintiff of the right to seek redress against those who have denied him the right to equal employment opportunity and EQUAL JUSTICE UNDER THE LAW.

19. The plaintiff's action in this case turns on the exercise of his free speech right under the First Amendment and his lawful activities under following:

(1) The EEOC Act. The plaintiff has, since at least May 1978, been trying to have the EEOC investigate his charges of unlawful employment discrimination. The EEOC has stated that its records show that one hundred 9100) such charges were filed by the plaintiff in this district. However, its has refused to provide him information.

(2) The FOIA. Upon the conclusion of those investigation the EEOC allegedly did conduct, and those which no investigation was apparently conducted, the plaintiff exercised his lawful right and requested a copy of the information, records, documents and things compiled by the EEOC and which were maintained in its system of records.

the requests were denied.

(3) Rule 11 FRCP. the plaintiff requested information under the FOIA in order to comply with that provision of Rule 11 which states in part that:

> "The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper, that to the best of the signer's knowledge, information, and belief formed after REASONABLE INQUIRY (emphasis added) it is well grounded in

III. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION IN IMPOSING SANCTIONS/COSTS ON THE PLAINTIFF-APPELLANT FOR APPEALING THE DENIAL OF INFORMATION, RECORDS, DOCUMENTS AND THINGS WHICH HE REQUESTED UNDER THE FOIA.

1. On or about September 17, 1991 the appellant submitted his FOIA request to the EEOC Regional Attorney, in Nashville, wherein he requested "Please provide (me) with a copy of the complete case file of the above captioned case (Wrenn v. Vanderbilt, 253-91-0339). The request was partially denied, and the appellant appeal to the Chairman of the EEOC. The administrative appeal was partially denied,

and the appellant appealed that administrative denial by filing a timely complaint in the United States District court, for the Middle District of Tennessee.

2. The FOIA (5 USC 552 (a)(3)) provides:

> "When an administrative appeal is denied, a requester has the right to appeal the denial in court."

See, e.g., Dept. of Justice v. Reporters.

3. Rule 11 of the Federal Rules of Civil Procedure provides, among other things, that:

> The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper, that to the best of the signer's knowledge, information, and belief formed after REASONABLE INQUIRY (emphasis added) it is well grounded in fact and is warranted by existing law ..."

(NOTE: The facts developed in this case as well as those the appellant made a legitimate effort to develop do not support any conclusion that the plaintiff's action was improper, without foundation, unlawful or was not grounded in fact or was not warranted by existing law. Of particular note is that neither the District Court nor the EEOC has claimed or

alleged that the information requested by the appellant does not exist. The sole issue in the FOIA appeal by the appellant is whether or not the federal agencies lawfully denied information to him regarding Vanderbilt Hospital on the basis of some claimed exemption(s)).

4. the appellant's argument is that, based on the facts in the case, NO FORM of sanctions and/or awarding of attorney fees and/or costs and/or admonishment should have been imposed on him but rather on the EEOC. In support the appellant respectfully submits that the FOIA appeal in this case was lawfully filed in the District Court of Nashville. The appellant had three choices where he could file his FOIA appeal (the Nashville Court (the district where the records are allegedly maintained), District Court in Washington, or the District Court in Northern New York (the district where he resides). he filed the appeal in the Nashville District Court because he was appealing the FOIA denial of information concerning the investigation the EEOC allegedly conducted of his charge of unlawful discrimination against the University of

Vanderbilt Hospital. this filing was based on his efforts to maximize the use of his limited resources by filing his FOIA appeal and his related failure to hire claim involving Vanderbilt in the same court.

5. It must be noted that NO court has found that the appellant's appeal of the denial of information concerning the Vanderbilt investigation (including the denial of information concerning 100 other charges the appellant allegedly filed in the Nashville District of the EEOC) was NOT a legitimate claim or that the claim was frivolous. Since filing his request for information in September 1991, the appellant has filed NO FOIA claim in connection with the denial in ANY court. Contrary to the EEOC and District Court, NO court has found that the FOIA claims in this case was "frivolous, unreasonable, or groundless, or were brought or continued in bad faith, or that the plaintiff continued to litigate after it clearly become so." See Christiansburg Garment Co. v. EEOC, 434 U.s. 412, 423, 98 S. Ct. 694, 701, 54 L.Ed. 2d 648 (1978). Thus, there is no basis in fact or law for the

awarding of attorney fees and/or costs by the court against the plaintiff. Moreover, the action by the District Court is not supported by the doctrine of res judicata. for a matter to be res judicata, there must be identity of parties, identity of cause of action, and a final decision on the merits. See, e.g., Harnett v. Billman, 800 F.2d 1313 (4th Cir. 1987). Also, it is well settled in federal law that res judicata and collateral estoppel do not apply when a person has been denied a full and fair opportunity to litigate the issues OR has not received a final judgment on the merits in the earlier case. It is undisputed by the admissible evidence which clearly demonstrates that NO court has decided the merits of the issue concerning the denial of appellant's appeal of his FOIA request for information compiled in the investigation of claims against the Vanderbilt University Hospital. See also, Montana v. United States, 440 U.S. 147, 153, 99 S. Ct. 970, 973, 59 L.Ed2d 210.

4. The actions by the EEOC should not have been condoned by the District Court. For the court to do so was a

clear abuse of discretion. What should have been a major concern of the District Court is the appellant's argument concerning the continuing brazen acts of the EEOC in deliberately violating The EEOC Act, by not processing and/or investigating the plaintiff's charges, and the agency's violation of the FOIA, by refusing to provide the plaintiff with information for his use in prosecuting those who have denied him equal employment opportunity. See, e.g., Bivins v. Six Unknown Names Agents, 403 U.S. 388 (1971).

5. The continuing actions and/or inactions of the EEOC clearly demonstrate a conspiracy to deprive plaintiff of the equal enjoyment of rights secured by law to all. More specifically, the rights promulgated in the Constitution (Free Speech and Procedural Due Process) and Titles VI and VII, of the Civil Rights Act of 1964, as amended, esp. The EEOC Act of 1972. See, e.g., Griffin v. Breckenridge, 403 U.S. 88, 91 S. Ct. 1790, 29 L.Ed. 338 (1971).

6. This Court is respectfully asked to note and compare the action and the results of the EEOC against the

plaintiff in other courts involving FOIA claims, where, not only did the courts NOT label his claims as "frivolous" or award costs but two courts of appeal have vacated and remanded them to the district court. See e.g., Wrenn v. Kemp, USCA DC Cir, No 91-5382, December 2, 1992 (A case where the appellant appealed the denial of information concerning an allegation made by the EEOC to Senator D'Amato that the appellant had filed 324+ charges); See also, Wrenn v. Shalala, No 92-2197, Fourth Circuit CA, September 14, 1993 (a case concerning the denial of information (information which the appellant has been trying to obtain since at least 1982) regarding appellant's charge of unlawful discharge against the University of Maryland Hospital).

7. the essence of the plaintiff's argument is that the selfserving conclusory statements of the EEOC are clearly not sufficient to explain why the information requested by him is somehow exempted from disclosure and/or that he is not entitled to pursue the denial of information in federal court. See, e.g., National Labor Relations Board v. Sears, Roebuck

and Co., 421 U.S. 132, 149 95 S. Ct. 1504, 1515, 44 L.Ed.2d 29 (1975); United States Dept. of Justice v. Julian, 486 U.S. 1, 108 S. Ct. 1606, 100 L.Ed.2d 1 (1988). See also, Wolfe v. Department of Health and Human Services, 889 F.2d 768, 774 (DC Cir. 1988) (en banc) (citing Mink, 410 U.S. 73, 93 S. Ct. at 827). Also see, Schell v. United States Department of Health and Human Services, 843 F.2d 933 (10th Cir. 1988) (quoting Sears, 421 U.S. at 151, 95 S. Ct. at 1516). The EEOC has refused to provide information under the FOIA concerning the 100 charges allegedly filed with it in the Nashville District by the plaintiff.

8. The case also turns on the question regarding the continuing actions of the EEOC against the plaintiff because of his protected civil rights activities, in opposing perceived unlawful employment discrimination. Instructive is EEOC v. Locals 14 and 15, Intgern. U. of Oper. Eng., 488 F. Supp 876, 879 (1977) where the courts states:

> "...it has been recognized from t he very first day of our country that (t)he very essence of

> civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receive an injury. One of the first duties of the government is to afford him that protection. ..." citing Marbury v. Madison, 5 U.S. (1Cranch) 137, 163, 2 L.Ed.60 (1803)."
>
> - and -
>
> "(2) part of this duty of the government to provide the protection of law is that litigants and witnesses who appear before federal courts do so secure in the knowledge that they cannot be harassed, intimidated, punished or otherwise suffer harm because they availed themselves of judicial system.."

9. The facts in this case present compelling and convincing evidence that on the basis of the EEOC's action, the plaintiff has been deprived of the right to pursue valid claims in federal courts against those who denied him equal employment opportunity. Thus this case was a request to the court to determine whether the plaintiff had been denied equal protection of the laws, and whether his request for information was legitimate use of his First Amendment rights. See, e.g., Logan v. Zimmerman Brush Co., 455 U.S. 422, 428, 102 S. Ct. 1148, 1153, 72 L.Ed.2d 265 (1982) (a cause

of action is a form of "property"); Landrigan v. City of Warwick, (1st Cir. 1980) 628 F.2d 736, 744 (coverup can give rise to cause of action for deprivation of right of access to courts).

10. The action of the EEOC is willful, malicious and an intentional abuse of discretion. Moreover, the action shows bad faith by the EEOC, in that the information concerning Vanderbilt and the alleged 100 charges filed by the appellant in the Nashville District IS NOT ALL RELATED TO ANY other claims he filed in ANY other court. The reference by the EEOC and the court to any other claims filed by the appellant are not related to the action herein and is solely an attempt to mask their unlawful conduct against him. Therefore, the appellant is entitled to award of HIS costs (5 USC 552(a)(4)(E)); appropriate sanctions (Rule 11, FRCP); and punitive damages for the EEOC's misrepresentation of the facts in this case, and that agency's intentional refusal to provide information requested by the plaintiff concerning Vanderbilt and 100 charges of discrimination which the

EEOC maintains that he filed with its Nashville District. See. e.g., F.D. Rich Co. v. United States ex rel., Industrial Lumber Co. 417 U.S. 116, 126, 94 S. Ct. 2157, 2163, 40 L.Ed.2d 703 (1974); Church of Scientology v. United States Postal Serv., 700 F.2d 486, 492 (9th Cir. 1983).

11. In summary, the action by the District Court is clearly erroneously as well as a clear abuse of discretion. The issue here is the denial of information under the FOIA by the EEOC and other federal agencies (esp. EEOC and DHHS) concerning the investigation of the charge filed by the appellant against the Vanderbilt University hospital. Also, the denial of information concerning a conspiracy to aid and abet by the Department of Justice, DHHS and EEOC.

12. The following claims cited by the District Court as having been pursued by the appellant in other courts have not bearing and/or relevancy to the FOIA issue presented here:

(1) Wrenn v. Kemp, No. 1:92CV 0133 (N.D. Ohio) was and FOIA appeal of the denial by the EEOC of

copy of the "33-day Notice" which the EEOC allegedly mailed to the app llant and which he did not receive. The court, based on the affidavit of the EEOC, decided that the appellant was not entitled to receive the document, despite the EEOC's allegation that the document was previously sent to him.

(2) Wrenn v. Rosa, et al., No 92-CV-2091 (LBS) (S.D.N.Y.), a case involving a request by the appellant to the court in which he requested that the responsible agencies be directed to investigate and/or process three charges of unlawful employment practices which he had filed with those agencies. To date the charges have not been investigated and/or processed.

(3) Wrenn v. Kemp, et al., No. 90-1063 (D.D.C), involves appellant's appeal of the denial of information concerning 324+ charges the EEOC alleges he had filed. the case is currently before the DC Court of Appeals.

(4) Wrenn v. Sullivan, et al., No r-91-2460

(D. Md), a claim for the denial of information concerning the appellant charge against the University of Maryland Hospital. The Court of Appeals remanded the case to the District Court of Maryland. The latter transferred the case to the District Court in DC where the case is pending.

CONCLUSION

The facts and legal arguments herein presented paint a clear picture of an abuse of discretion by the District Court. Moreover, the decision by the District Court is clearly erroneous, in that the decision has no basis in fact or the decision is against the manifest weight of the admissible evidence presented to the court. Of particular note in this case is that contrary to the District Court (page 14 of Memorandum of June 19, 1993), the doctrine of res judicata does not apply to ANY of the issues presented in this case. All the issues presented by the plaintiff relate to his charge of unlawful discrimination in connection with the failure to hire him by the University of Vanderbilt Hospital AND the efforts of the various federal agencies to aid and abet that employer.

Based on the abuse of discretion standards, this court has authority to review this appeal. Accordingly, the curt should review the case and upon completion of its review, vacate and remand the case to the District Court for proper proceedings.

Respectfully submitted,

/s/ Curtis L. Wrenn
Curtis L. Wrenn
95 Champion Street
West Carthage, NY 13619
Tel: (315) 493-4028

CERTIFICATE OF SERVICE

I certify that a copy of the Appellant's Reply Brief was mailed to the following individuals on the 17th day of November, 1993, via first class U.S. Mail, postage prepaid:

Tim K. Garrett, Esq.
BASS, BERRY & SIMS
2700 First American Center
Nashville, TN 37238

Michael L. Roden, Esq.
Assistant U.S. Attorney
110 9th Avenue, South
Suite A-961
Nashville, TN 37203-3870

Kathleen Oram, Esq.
EEOC
1801 L. Street, NW
Washington, DC 20507

/s/Curtis L. Wrenn
Curtis L. Wrenn

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CURTIS L. WRENN,

Plaintiff-Appellant

vs

Docket No 93-5994

VANDERBILT UNIVERSITY
HOSPITAL, ET AL.,

Defendants-Appellees.

APPELLANT'S MOTION FOR LEAVE OF COURT TO FILE HIS MEMORANDUM IN OPPOSITION TO APPELLEES' REQUESTS FOR COST

COMES NOW the appellant to file this Memorandum as his request for leave of court to file his opposition to the appellees' requests for costs. This motion should be granted for the reasons set forth in the accompanying Memorandum in support, where the appellant will argue that his objection is primarily on the grounds that the sanctions are excessive and unwarranted action against him for exercising his lawful rights. Moreover, the unjustified pains and sufferings visited

upon him constitute cruel and unusual punishments.

Respectfully submitted,

/s/Curtis L. Wrenn
Curtis L. Wrenn, Pro Se

MEMORANDUM IN SUPPORT

1. In response to the Order of the Court of January 31, 1994 the appellees have submitted their respective costs allegedly associated with defending this case. The appellant renews his opposition to the award of costs, damages, sanctions and/or any form of admonishment. The reason being EVERY act of the appellant in this case was pursuant to the Constitution and laws of the United States. Moreover, the bills of costs submitted by the appellees show an inordinate amount of time, unnecessary and excessive costs associated with a simple case such as this. There is nothing unusual about this case. Thus, the time and costs the appellees say they are entitled to is not warranted by this "non-complicated" case. This is not a "complex" case which warrants the proposed costs of each appellee. See, e.g., Waters v. Wisconsin Steel Works of International Harvester Co., 502 F.2d 1309, 1322 (7th Cir. 1974) (citing Disciplinary

Rule 2-206, ABA Code of Professional Responsibility). Also see, Christianburg Garment Co., v. EEOC, 434 U.S. 412, 417, 98 S. Ct. 694, 698, 54 L.Ed.2d 648 (1978); Albermarle Paper Co v. Moody, 422 U.S. 405, 415, 95 S. Ct. 2362, 2370, 45 L.Ed.Ed. 280 (1975)

2. For more than fifteen years the appellant has been denied equal employment opportunity by every acute care hospital in America which he made application for an existing vacancy. Similarly, his efforts to vindicate his rights under governing laws have been prevented, and/or frustrated, and/or impeded by the federal agencies that were mandated to enforce his rights to equal employment opportunity.

3. The federal agencies and the courts in this case have launched a vindictive campaign to punish the appellant for exercising his LAWFUL RIGHTS under Titles VI and VII, the ADEA and the FOIA, to file claims against those who have deprived him of his rights. More specifically, the

appellant's claims in this case were filed pursuant to appropriate laws promulgated by the United States of America, which expressly provides that he or any other citizen has a "right" to pursue claims in the appropriate district court AND to file an appeal if the decision of the former is clearly erroneous and/or constitutes an abuse of discretion.

4. The appellees have used lawful and unlawful means to deprive the appellant of his rights secured by the Constitution (First, Fourth, Eight and Fourteenth Amendments) and laws (The EEOC Act, FOIA and ADEA). Now they would have the court to reward them for their wrong doings by imposing unwarranted sanctions on the appellant.

5. Based upon the foregoing the appellant renews his objection to the imposition of sanctions and the awarding of costs by the Court, and the "bill of costs" submitted by each appellee. The reason being the Court has denied the appellant

the required procedural due process hearing. More importantly, the Court has not established that the appellant is guilty of any wrongdoing and/or that his claims were submitted in bad faith and/or that his Complaint in the District Court or his appeal to this court was in violation of ANY law or rules OR that his actions in this case was not supported by facts and warranted by applicable statutes and/or caselaw. The following facts do not support ANY form of wrongdoing by the appellant:,

(1) He was denied equal employment opportunity for a position which he was OBJECTIVELY qualified for. A case which the appellant argued that "but for" his race, age and previous opposition to the employment practices of the Vanderbilt University Hospital he would have been considered for employment. See, e.g., Clark v. Atchison, Topeka and Santa Fe Ry co., 731 F.2d 698 (CA OK 1984).

(2) He was denied information from HIS charge file, which the EEOC acknowledged that it had in its system of record. The appellant has argued that he has a "right" to pursue his request for information contained in HIS charge file. See, e.g., EEOC v. Associated Dry Goods Corp., 449 U.S. 590. 24 FEP 1356 (1981).

(3) He was denied information from other federal agencies which they had compiled of HIM, including, but not limited to, information concerning their concerted action with officials of the Vanderbilt University Hospital.

WHEREFORE, the appellant prays the "bills of costs" submitted by the appellees will be denied, in that there is no basis for sanctions and/or the awarding of attorneys fees to the appellees.

Respectfully submitted,

/s/Curtis L. Wrenn
Curtis L. Wrenn, Pro Se
95 Champion Street
West Carthage, NY 13619

Tel: (315) 493-6801

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed, via first class U.S. Mail, on February 20, 1994 to the following:

Tim K. Garrett, Esq.
BASS, BERRY & SIMS
2700 First American Center
Nashville, TN 37238

Michael L. Roden, Esq.
Assistant U.S. Attorney
110 9th Avenue, South, Suite A-961
Nashville, TN 37203-3870

Kathleen Oram, Esq., EEOC
1801 L. Street, NW
Washington, DC 20507

/s/Curtis L. Wrenn
Curtis L. Wrenn

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CURTIS L. WRENN,

Plaintiff-Appellant

PETITION FOR REHEARING OUT OF TIME

vs

Docket No 93-5994

VANDERBILT UNIVERSITY HOSPITAL, ET AL.,

Defendants-Appellees.

COMES NOW the appellant and petitions the Court to accept his petition for rehearing out of time. His previous petition for rehearing exceeded the allowable Fifteen pages and was rejected by the Court, as a result of petitioner misreading the Rules of the Court. That is, he misread the Rule for briefs as applying to petition for rehearing (15 pages). As grounds for his request for rehearing, the petitioner respectfully submits that the Court has misapprehended the facts AND has

misapplied the laws governing FOIA, Title VI and the ADEA, conspiracy based upon circumstantial evidence, and punitive action in the form of attorney's fees and double costs for legitimate claims.

I. INTRODUCTION:

This petition concerns this Court's decision to uphold the lower court's decision at the summary judgment level, dismissing petitioner's FOIA and employment discrimination claims. Petitioner believes the decisions are clearly erroneous, in that they are: (1) against the manifest weight of evidence; (2) contrary to decisions of the Supreme Court and the other courts of appeal; and not supported by statutory and/or case law.

II. ISSUES PRESENTED FOR REVIEW:

1. FOIA CLAIMS:

(1) Whether the decision that "... the EEOC is entitled to judgment as a matter of law on the FOIA claim" is

clearly erroneous, in that it is contrary to decisions of the Supreme Court and the other courts of appeals? See, U.S. Dept of Justice v. Reporters Committee, 109 S. Ct. (1989): "... the FOIA expressly places the burden "on the agency to sustain its action".

(2) Whether the district court conducted the required de novo review. Petitioner submits that the court did not, and as a result its decision was based on the conclusory submission of the federal agencies. The failure of the court to conduct a de novo review resulted in a decision not based on the facts and/or applicable case law. See, e.g., Vaughn v. U.S. 936, F.2d 862, 863 (6th Cir. 1991); DeSalvo v. IRS (CA 10 Okla 1988), 861 f.2d 1217; King v. Department of Justice, No 84-5098, 9/25/87, 56 LW 2183.

2. EMPLOYMENT DISCRIMINATION:

Whether Exhibit 1 supports the Court's contention that the petitioner did not establish prima facie case. Ex. 1 is

clear and convincing proof to support his claims in this "mixed motive" case (race, retaliation and age), and as such the burden is on the employer to demonstrate a reason for denying him equal employment opportunity, "by proving that it would have made same decision even if it had not allowed gender (or race, or age) to play such a rule) (See, Price Waterhouse v. Hopkins, 109 S. Ct. 1775, 1776 (1989)):

REQUIREMENTS:	WRENN	ROGERS
Education MHA/MBA	MHA	MBA
3-5 years of progressive responsibilities in health care management	10+ yrs	0
Teaching hospital experience	yes	No

(NOTE: Ms. Rogers' experience is that of health care provider as Occupational Therapist. Wrenn's experience has been in health care management, having risen from Administrative Resident (Trainee) to Chief Executive Officer)

It appears that proper weight was not given to appellant's qualifications. The Court is asked to review Exhibit 1, esp. p. 1 where is will find that the appellant met ALL of the

advertised objective requirements of the employer. See, Burrus v. United Telephone Co. of Kansas, Inc., (CA Kan 1982), 683 F.2d 339 (Objective job qualifications are to be considered in determining whether employment discrimination plaintiff has established prima facie case, but subjective criteria are to be treated at later stage of McDonnell Douglas, three-step process).

3. GRANTING OF SUMMARY JUDGMENT:

(1) Whether the defendants clearly established that there were no triable issues, and that they were entitled to summary judgement as a matter of law. The defendants' motion for summary judgment should have been denied. Under the FOIA Summary judgment in favor of agency is proper only where agency proves that each document that falls within class requested either has been produced, is unidentifiable, or is wholly exempt from FOIA's inspection requirements. National Cable Television Asso. v. Federal

Communications Com. (1973) 156 App DC 91, 479 F2d 183. The federal agencies were not required to so prove.

(2) Similarly, Vanderbilt was not required to establish that it provided the appellant equal employment opportunity. In reviewing the defendant's motion, the Court must consider the pleading, related documents, incorporated exhibits and other admissible evidence, and all reasonable inference in a manner most favorable to the non-moving party. See, e.g., Adickes v. Kress & Co., 398 U. S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970). The principle is well established that summary judgment is generally inappropriate in cases, such as this, involving questions of motive or intent. See, e.g., Conrad v. Delta Airlines, Inc., 494 f.2d 914 (7th Cir. 1974). As is demonstrated in Ex 1 it has not been shown whether or how Vanderbilt met this requirement.

4. APPELLANT'S REQUEST FOR AWARD OF COSTS:

(1) The critical question is whether the Court erred as a matter of law in awarding sanctions and/or cost and double costs to the defendant. Instructive is the fact that the FOIA contains NO provisions for awarding costs to a federal agency. Thus, this case turns on the question of whether the appellant is entitled to and award of damages against the defendants for the violation of his constitutional and/or other federal rights. The actions in this case demonstrate concerted action to deprive him of the equal enjoyment of rights secured by law to all. Specifically, the rights promulgated in the Constitution (Free Speech and Procedural Due Process) and Title VII (See, e.g., Griffin v. Breckenridge, 403 U.S. 88, 91 S. Ct. 1790, 29 L.Ed. 338 (1971)), and the ADEA.

(2) It appears that the courts in their zeal to enforce the wishes of the federal agencies, AND to punish the appellant for his opposition to perceived unlawful employment discrimination, have failed to consider one

central requirement before imposing sanctions on him, and that is: "An objective standard of reasonableness is also applied to the pleading as a whole in order to determine whether it is frivolous within the meaning of Rule 11. If, at the time an attorney files a pleading, reasonable practitioners could have disagreed over the existence of a good faith argument in support of that paper, sanctions are inappropriate." See, e.g., Community Elec. Serv. v. National Elec. Contr., 869 f.2d 1235 (9th Cir.), cert. denied 493 U.S. 891, 110 S. Ct. 236, 107 L.Ed.2d 187 (1989). See also Riverhead Sav. Bank v. National Mortgage Equity Corp., 893 F.2d 1109 (9th Cir. 1990) (... since the cause of action was objectively reasonable at the time the claim was filed, it could not be deemed frivolous).

(3) The question the appellant is asking the Court to reconsider concerns whether the imposition of costs, attorney fees and double costs constitute cruel and unusual

punishment, excessive fine, and is a severe form of punishment which was apparently imposed SOLELY because the Court disagreed with the appellant's legal theories. Also, whether the fines violate the Constitution and laws of the United States, in that they were imposed without granting the appellant a procedural due process hearing. Thus, the question to be answered is whether the imposition of the fines contravene decisions of the Supreme Court. See, e.g., Christiansburg Garment Co., v. EEOC, 434 U.S. 412, 423, 98 S. Ct. 694, 701, 54 L.Ed.2d 648 (1978). (In order to assess attorney's fees, the Court must find that plaintiff's claim "was frivolous, unreasonable, or groundless, or that the plaintiff continued litigate after it clearly became so.")

5. CONSPIRACY CLAIM:

Whether a conspiracy, such as in this case, can be demonstrated by circumstantial evidence. The basis for this question is the Court has not recognized that the

petitioner cannot demonstrate a conspiracy when he cannot obtain requested information under the FOIA. Similarly, discovery requests have been denied, apparently under the provisions of the Federal Rules of Civil Procedure that discovery is not authorized since the very nature of the actions (FOIA) itself is to obtain discovery. Thus on the one the Court has denied petitioner's conspiracy complaint on the ground that it is conclusory, while on the other hand the very information he needs and has requested from the federal defendants to establish his conspiracy claim, has also been denied by the courts. The question is whether the Court's decision is contrary to decisions of the Supreme Court and the other courts of appeals. See, e.g., Carpenters v. Scott, 464 U.S. 875, 103, 104 s. Ct. 211, 77 L.Ed 2d 1049 (1983); Griffin v. Breckenridge, 402 U.S. 88, 102-03, 91 S. Ct.1790, 1798-99 l.Ed., 2d 338 (1971) THE conspiracy, ..., must aim at a deprivation of the equal enjoyment of rights secured by

the law to all. (NOTE: The petitioner is complaining about the denial of rights secured by the First, Fourth, Fifth, Eighth and Fourteenth Amendments, and Title VII and the ADEA, and the FOIA).

III. GENERAL ARGUMENT:

The FOIA (5 USC(d)(1) provides that:

> "An agency, upon request, must make its records "promptly available to any person" requesting them, provided the request "reasonable describes the records sought."

- and -

> "(g)(1) CIVIL REMEDIES. Whenever any agency: "(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction ..."

- and -

> "When a requester goes to court, "the burden of justifying the withholding of documents is on the government."

- and -

> "(g)(3)(B) The court may assess against the United States reasonable attorney fees and other litigation costs ... but in no case shall a person entitled to recovery receive less than the sum of $1,000; ..."

Plaintiff's Complaint and exhibits demonstrate his efforts to obtain information from federal agencies under the FOIA and their failure to disclose the requested information. Thus, The issue before the Court is whether the information requested was denied for a legitimate reason.

2. It is well settled in FOIA law that "disclosure" and not "secrecy" is the dominant objective of the Act. See, e.g., Department of the Air Force v. Rose, 425 U.S. 352, 96 S. Ct. 1592, 48 L.ed.2d 11 (1976). It is also well settled that the burden is on the agency to justify its reason for not providing the requested records under the FOIA. See, U.S. Dept. of Justice v. Reporters Committee for Freedom of the Press, 109 S. Ct. 1468, 1484 (1989):

> "This section (7(C)) does not apply to matters that are - records or information compiled for law enforcement purposes, but ONLY TO

> THE EXTENT THAT THE PRODUCTION OF SUCH LAW ENFORCEMENT RECORDS OR INFORMATION ... COULD REASONABLY (emphasis added) be expected to constitute an unwarranted invasion of personal privacy."

In this case, the federal defendant have failed to demonstrate that they have disclosed every disclosable document from their system of records OR that the documents not disclosed where WHOLLY exempt from disclosure under Exemption 7(C) or some other specific statutory exemption, such as, for example, 5 USC 552(b)(5). In reversing the decision of the Court of Appeals, the Supreme Court held in Justice, among other things, that:

> "In sum, Robbins' focus on the singular "an" in the phrase "an unwarranted invasion of personal privacy" is not a sufficient reason to hold that Exemption 7(C) requires ad hoc balancing."

Accordingly, the petitioner submits as a result of the district courts refusal to conduct a Vaughn Index and/or and In Camera Inspection, it did not determine whether information

was withheld for a legitimate reason.

3. Whether the failure of the Court to acknowledge that the plaintiff had met his prima facie case of unlawful employment discrimination, under Title VII and the ADEA, led to an erroneous conclusion of law AND was contrary to decisions of the Supreme Court and the other courts of appeals. See, e.g., Exhibit 2, esp. p. 1. Also, see McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981); Connecticut v. Teal, 457, U.S. 440, 73 L.Ed. 2d 130, 2534-2535:

> "Section 703(a)(2) prohibits practices that would deprive or tend to deprive "any individual of employment opportunities." the principal focus of the statute is the protection of the individual employee, rather than the protection of the minority group as a whole. Indeed, the entire statute and its legislative history are replete with references to protection for the individual employee.

- and -

"("Every man must be judged according to his ability. In that respect, all men are to have an equal opportunity to be considered for a particular job")." (NOTE: The plaintiff was not interviewed, while other similarly situated applicants were).

- and -

The fact remains, however, that irrespective of form taken by the discriminatory practice, an employer's treatment of other members of the plaintiff's group can be "of little comfort to the victims of ... discrimination." (citing) Teamsters v. United States, supra, 431 U.S. at 342,97 S Ct., at 1858. title VII does not permit the victim of a facially discriminatory policy to be told that he has not been wronged because other persons of his or her race or sex were hired. That answer is no more satisfactory when it is given to victims of a policy that is facially neutral but practice discriminatory. Every individual employee is protected against both discriminatory treatment and "practices that are fair in form, but discriminatory in operation. "(NOTE: The question to be answered is whether the Court's statement "...he has utterly failed to prove that the circumstances give rise to an inference of discrimination ... The position at issue was first offered to a black male: is clearly erroneous, in that it is not supported by Exhibit 1: see esp p.1 and 2-8" and the governing case law." (ALSO NOTE: The Court is also asked to

> reconsider and /or clarify its statement "Wrenn is African American ..." The origin of this statement can't be found in ANY papers or pleading filed by the plaintiff in this or any other case. THE QUESTION is if the Court misstated the appellant's race, what facts were also misstated and/or misapprehended?)

4. In EEOC v. Associated Dry Goods Corp. 449 U.S. 590 24 FEP 1356 (1981), the Supreme Court considered the question "whether prelitigation disclosure of information in a commission file to the employee who filed the Title VII claim in a "public" disclosure within the meaning of the statutory restrictions." A summary of the Court's decision:

> "... we have concluded that Congress did not include charging parties within the "public" to whom disclosure of confidential information is illegal under the provisions of Title VII. The charge of course, cannot be concealed from the charging party. thus, the "public" to whom the statute forbids disclosure of charges cannot logically include the parties to the agency proceeding. the parties to any agency proceeding are hardly members of the "general public,..."

Accordingly, the EEOC cannot invoke "member of the

public" for refusing to disclose information to the appellant. the question is whether the decision applies to other agencies?

5. Finally, the Court is asked to reconsider its decision that res judicata applies to issues presented in this case. appellant submits that the decision is clearly erroneous. it is well settled in federal law that res judicata and collateral estoppel do not apply when a person has been denied a full and fair opportunity to litigate the issues OR has not received a final judgment on the merits in the earlier case. The admissible evidence in this case clearly demonstrates that NO court has ever considered the FOIA issues presented here, involving Vanderbilt. Moreover, no court has rendered a decision on the merits of the issues. See, e.g., Montana v. United States, 440 U.S. 147, 153, 99 S. Ct. 970, 973, 59 L.Ed.2d 210. See also, Harnett v. Billman, 800 F. 2d 1313 (4th Cir. 1987) (For a matter to be res judicata, there must be identity of parties, identity of causes of action, and a final

decision on the merits).

CONCLUSION

1. The grounds for this complaint is that the EEOC has refused to provide information from the appellant's charge file which he lawfully requested under the FOIA. As a result of the denial a complaint was filed in the district court and was dismissed, resulting in this appeal.

2. Similar requests for information were also made of the other federal agencies> the requests were also denied. No legitimate justification has been offered for denials.

3. appellant's complaint against the Defendant Vanderbilt is that he was denied equal employment opportunity, because of his race, retaliation and age.

4. The essence of the petitioner's motion for reconsideration is that: 91) summary judgment was not justified, and (2) the excessive fine and unwarranted punishments by the courts are not justified under the

Constitution and laws of the United States. Moreover, the punishments were inflicted on the petitioner on the basis of false and misleading information, and that it was unfairly imposed by the courts without a procedural due process hearing. The petitioner respectfully submits that if the orders of the courts are permitted to stand, he will be deprived of property and/or property interest, and rights privileges and immunities secured by the Constitution (First, fourth and Fourteenth Amendments) and laws (including but not limited to the Civil Rights Act of 1964, as amended) of the United States. More specifically, the petitioner, exercising his First Amendment right, filed a complaint in the District Court against unlawful employment discrimination and a opposition to the denial of information under the FOIA. On the basis of current laws, the petitioner had a reasonable expectation that he would be given an opportunity for fair and equal treatment, including a hearing, to his dismay he was denied equal

treatment and equal rights, in that the District Court abused its discretion by refusing to acknowledge his prima facie case, and dismissed his FOIA claim because, allegedly, ".. the Court does not find that the plaintiff has stated a viable claim under the FOIA ... 5 USC 552 9b) (5) (NOTE: The Court cites 5 USC 552(b)(5) as its basis for denying the information, the EEOC cites 5 USC (b)(3) and (5) and (b)(7)(c) (Exhibits 2, page 7). The courts have not required EEOC to justify its non-disclosure, nor conduct the de nova review.

WHEREFORE, petitioner prays that the Court will reconsider its decision and will remand the case. Should the Court not remand, the petitioner requests that he be granted a hearing to present oral argument regarding the issues in this case. Moreover, the petitioner asks that if the Court, for any reason, deny the request for reconsideration, he be excused from paying the sanctions because of his poverty, resulting from fifteen years of being denied employment in his chosen

profession of hospital and health care administration, and the tremendous expenses he has incurred in his efforts to vindicate his civil rights. See, e.g., Poe v. Deers Co, (CA 8th Cir.) 695, F.2d 1103 (1982).

Respectfully submitted,

/s/Curtis L. Wrenn
Curtis L. Wrenn
95 Champion Street
West Carthage, NY 13619
Tel: (315) 493-6801

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF _____

CURTIS L. WRENN
95 Champion Street
West Carthage, NY 13619

Plaintiff,

COMPLAINT WITH JURY DEMAND

VS

VANDERBILT UNIVERSITY HOSPITAL
Box 160, Peabody Campus
Nashville, TN 37203

Defendants.

I. COMPLAINT

1. COMES NOW the plaintiff and alleges that the defendant has conspired with the United States Department of Justice, and public and private employers to deny him the rights, privileges and immunities secured by the Constitution and laws of the United States including, but not limited to, the First, Fifth, Eighth and Fourteenth Amendments, The Equal employment Opportunity Act (The EEOC Act), the Civil

Rights Acts of 1866, 1964 and 1991, and the Freedom of Information/Privacy Act (FOIA/PA).

2. The plaintiff's allegations against the defendant is based on its continuing acts to deny him equal employment opportunity in his chosen profession of hospital and health care administration, and its continuing retaliatory actions against him for his previous opposition to the continuing denial of equal employment opportunity to Negroid Americans in violation of the Constitution and laws of the United States.

II. JURISDICTION

3. The jurisdiction of this court is invoked pursuant to the provisions of 28 USC 1343(a)(4), this being an action in equity and a suit authorized by law to be commenced by any person to recover damages for injury and to secure other forms of relief under acts of Congress providing for the protection of civil and legal rights.

4. The jurisdiction of this court is also invoked pursuant to 28 USC 1331, this being a civil action wherein the

matter in controversy exceeds the sum or value of fifty thousand dollars ($50,000.00), exclusive of interests and costs, and arises under the Constitution and laws of the United States.

5. Jurisdiction of this court is also invoked under The Equal Employment Opportunity Act/Titles VI and VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, and the Civil Rights Act of 1866.

6. The plaintiff, Curtis L. Wrenn, is a Negroid citizen whose date of birth is 14 February 1930, and is a resident of West Carthage (Jefferson County), New York. Plaintiff is well qualified in hospital and health care administration, and personnel administration by virtue of education, training and twenty years of experience.

III. CHARGE

COUNT I:

7. The Defendant Vanderbilt, and its agents and Employees have since at least February 1978, have conspired with public and private employers to take action to deprive

the plaintiff of the rights, terms, conditions, privileges and compensation of employment, in violation of 29 USC 623 et seq., 42 USC 1981, 1983, 1985, 2000d and 2000e. Moreover, as a result of the Defendant's intentional malicious action in refusing to hire the plaintiff's in violation of the plaintiff's rights under the Constitution and laws of the United States, he has suffered and continues to suffer sever psychological and emotional distress, and a loss of income. See Exhibit 1 which is incorporated herein by reference as though fully stated.

COUNT II

8. Plaintiff repeats and re-alleges each and every fact and allegation set forth in paragraphs one through seven, as if fully set forth in this paragraph.

9. The plaintiff did on or about September 11, 1990 in response to the defendant's advertisement, submit an application for the position of Assistant Hospital Directors. He meet the state qualifications for the position, but despite his qualifications he was denied equal employment

opportunity, in violation of 29 USC 623 et seq., and 42 USC 1981, 1983, 2000d and 2000e. See Exhibit 2 which is incorporated herein expressly by reference as though fully stated.

IV. ADMINISTRATIVE EXHAUSTION

10. The plaintiff has exhausted the required administrative requirements of the ADEA and Title VII, by filing an administrative complaint with the EEOC.

V. PRAYER FOR RELIEF

Wherefore, plaintiff demands judgment as follows.

1. Damages in the amount of $100,000.00 for the defendant continuing denial of the plaintiff's rights, immunities ad privileges, and for their malicious intentional action to deny him equal employment opportunity.

2. an order awarding him his reasonable costs and related expenses incurred, since at least 1978, in bringing this action against the defendants.

3. Award of $200,000.00 for the defendant's continuing acts of retaliation against the plaintiff because of

his previous opposition to unlawful employment discrimination.

4. The court will grant the plaintiff such other and further relief as it may deem just in the circumstances.

5. That the court will monitor compliance with any order issued by it.

Respectfully submitted,

/s/ Curtis L. Wrenn
Curtis L. Wrenn, Pro Se
95 Champion Street
West Carthage, NY 13619
Tel: (315) 493-6801

P. O. Box 203
Fort Drum, NY 13603
September 11, 1990

Vanderbilt University
Recruitment and Staffing
Box 160, Peabody Campus
Nashville, Tn 37203

Ladies and Gentlemen:

In response to your recent advertisement in the September 5, 1990 edition of HOSPITALS, enclosed please find the following to support my application for the position of Assistant Hospital Director:

Personal Resume
Transcript from MCV-VCU
Transcript from the Univ of Neb-Omaha
DD form 214 - 1970 Army Retirement
Paper Entitled "A Question of Ethics"
Certificates of Training and Membership

In addition to the experiences reflected in the above documents, please note that in my present position I have gained a great deal of knowledge and experience in the areas of total quality management, continuing quality improvement,

risk management, quality assurance, and credentialing. Also, I am thoroughly familiar with the procedures and requirements of the Joint Commission on the Accreditation of Health Care Organizations.

I am looking forward to a personal interview to give you an opportunity to further assess my qualifications for the position of Assistant Hospital Director.

Thank you for considering my application. Please feel free to contact me should you need additional information. My telephone numbers are: work (315 772-7817; home (315) 493-6801.

Very truly yours,

/s/Curtis L. Wrenn
Curtis L. Wrenn, MHA, FAAMA

Enclosures
CERTIFIED MAIL P094019036

ASSISTANT
HOSPITAL DIRECTOR

Vanderbilt University Hospital, a 661-bed teaching facility which offers many innovative state-of-the-art specialty programs, seeks an Assistant Hospital Director to manage a variety of clerical, professional, and support service departments.

This is an excellent opportunity for a health care administrator with 3-5 years of progressive responsibilities in health care management. MHA or MBA degrees required. Teaching hospital experience preferred. Responsibilities call for leadership and communication skills, the ability to work with departmental and executive management and managerial accountability for delegated responsibilities.

Vanderbilt offers a competitive salary and a comprehensive benefits package. Send complete credentials to:

VANDERBILT UNIVERSITY
Recruitment and Staffing
Box 160, Peabody Campus
Nashville, TN 37203
Vanderbilt University is an Equal Opportunity/Affirmative Action Employer

VANDERBILT UNIVERSITY

NASHVILLE, TENNESSEE 37203

Human Resource Services Box 160, Peabody Campus

November 26, 1990

Curtis L. Wrenn
Post Office Box 203
Fort Drum, New York 13603

Dear Mr. Wrenn:

Thank you your interest concerning the position of Assistant Hospital Director.

We received a large number of responses and we carefully evaluated each candidate's qualifications. Unfortunately, your qualifications do not match the specific requirements of this position.

We will maintain your resume in our active file for six months. In the event an appropriate opening occurs that matches your skills and career objectives, we will contact you.

We do appreciate the interest you have shown in Vanderbilt University and wish you success in your employment search.

Sincerely,

/s/Jan L. Spears
Jan L Spears
Manager,
Recruitment and Staffing

JLS/mdc

CURTIS L. WRENN

Home Telephone: _____

_____

OBJECTIVE — Executive position in a hospital or health care agency.

RELATED EXPERIENCE — More than fifteen years of varied health care management experience, including: Administrator of a community hospital; Corporate Director of Personnel for large affiliated teaching hospital; Chief Executive Office of two psychiatric hospitals; Health care Management Consultant: Executive Director of a comprehensive ambulatory care center, and Health Systems Specialist fora military organization.

EDUCATION

General

1990-91 — PROFESSIONAL CAREER DEVELOPMENT INSTITUTE
The School of Paralegal Studies, Atlanta, Georgia
Certificate in Paralegal, with a specialization in Civil Litigation

EDUCATION

1966 — UNIVERSITY OF NEBRASKA AT OMAHA
Bachelor of General Studies, with a major in Business.

1973 — UNIVERSITY OF ALABAMA IN BIRMINGHAM
Health Service Administrators' Development Program--Certificate in Hospital and Health Care Administration.

1975 — MEDICAL COLLEGE OF VIRGINIA
Master's in Hospital and Health Administration.

Military
1966 — Adjutant General's Basic Officer Course.

WORK EXPERIENCE

November 1986-Present — U.S. DEPARTMENT OF DEFENSE
Employed in a variety of positions. Initially with the U. S. Army Property and fiscal Office, Latham, New York,

WORK EXPERIENCE

November 1986 to March 1988, and later with the U. S. Navy Recruiting District, Albany, March 1988 to October 1988. Since November 1988 I have been employed with the Wilcox Hospital-Clinic, fort Drum, New York as Health Systems Specialist for this military health care facility which provides inpatient and out patient services. Serving as the staff specialist in planning, coordinating, developing, evaluating and maintaining the Quality Assurance Utilization Management, Risk Management and Credentialing Programs.

October 1985 - October 1986

Self Employed

October 1983 - October 1985

WHITNEY M. YOUNG, JR. HEALTH CENTER, INC., Albany, NY

Executive Director of this ambulatory health care center. Supervised and directed all activities of this Ambulatory Health Care Center which provided comprehensive care to more than 86,000 patients. the Center was affiliated with two

WORK EXPERIENCE

community hospitals and a major medical college.

January 1981 - September 1983

MINORITY HEALTH CARE CONSULTANT, INC., Toledo, OH
President and Chief Executive Officer of a diversified corporation. The Corporation specialized in developing management plans for the provisions of residential services for adult mentally ill patients, and assisting health care managers in solving problems related to cost containment, management development and quality assurance.

December 1979 - December 1980

TOLEDO MENTAL HEALTH CENTER, Toledo, OH
Superintendent/Chief Executive Officer of this 550 bed, psychiatric teaching hospital. Reorganized the staff to increase productivity and decrease the span of control. Responsible for 700 employees and a budget of $16M. Accomplishments: Successfully completed a review by the Joint Commission of the Accreditation of Hospitals (JCAH); established a cost

WORK EXPERIENCE

containment program which resulted in savings in excess of $1.2M; established a Materials Management Program (believed to be the first for a State of Ohio Hospital); reorganized the third party billing procedures so as to increase the flow of revenue; and developed a quality assurance program to comply with JCAH requirements.

July 1978 - November 1979

ANOKA STATE HOSPITAL, Anoka, MN

Chief Executive Officer for this 467 bed JCAH accredited psychiatric hospital. Originally hired as Administrator, and was promoted to CEO position on April 5, 1979 following the resignation of incumbent. Directed all hospital operations including admission and discharge, housekeeping, laundry and linen, plant maintenance, personnel, medical records, dental, pharmacy, nursing, psychiatric, medical, dietary, purchasing, etc. Served as ex-officio member of the following Medical Staff committees: Executive, Utilization Review, Medical Records, Medical Care Appraisal, and Pharmacy and

WORK EXPERIENCE

Therapeutic. Participated in community planning. Developed and implemented a quality assurance/utilization review program.

Major Accomplishments: Instituted internal controls to protect and safeguard State assets. Developed a perpetual inventory management system. Reviewed all hospital policies, and developed needed policies. Reorganized the hospital medical staff. Developed and implemented a medical care evaluation process. Upgraded all hospital services to conform to JCAH standards. Reorganized the treatment programs to provide better clinical services and to maximize hospital resources. Achieved JCAH accreditation after only one year on the job; the hospital had been disaccredited for four years prior to my arrival. Developed, implemented utilization review plan to comply with PSRO requirements.

May 1976 -
June 1978
Baltimore, MD

UNIVERSITY OF MARYLAND HOSPITAL,

WORK EXPERIENCE

Associate Director for Administration for this 864 bed medical school hospital. Responsible for the day-to-day operations, including acting as preceptor for two Administrative Residents; directing and coordinating the activities of four Assistant Directors--Assistant Director for Ambulatory Services, Assistant Director for General Services, Assistant Director for Professional and clinical Services, and Assistant Director for Human Resources Development.

Served as member of various Medical Staff committees including Bylaws, Utilization Review, Patient Care, Medical Records, Cancer, and Operation Room. Coordinated facilities planning, including major renovations project in excess of $5 million. Member of Hospital Budget Committee. Responsible for 2300 employees and a budget in excess of $40 million. chairman of Hospital Space Committee that was responsible for assigning and allocating the hospital physical resources.

WORK EXPERIENCE

Major Accomplishments: eliminated or renegotiated four contract services resulting a dollar savings exceeding $1 million; established a Community Advisory Group providing liaison between the Hospital and the Community it serves; developed, implemented a Cost Containment Program and a Risk Management Program.

May 1975 - April 1976

MEDICAL CENTER HOSPITAL, Norfolk, VA
Director of Personnel for this corporation having two hospital divisions with a total of 910 beds. The Medical Center serves as the "teaching hospital" for Eastern Virginia Medical School, and does not have its own teaching hospital. Directed personnel program; supervised 20 specialists who provided personnel support for more than 3,000 employees; attended regular and special meetings of Governing Body and Medical Staff; was one of four corporate officers who reported to the Chief Executive Officer. Member of Medical Center Budget Committee.

WORK EXPERIENCE

Directed the preparation of the Manpower Budget and Personnel Budget, and assisted in the planning and developing of a Medical Center budget in excess of $55 million.

Major Accomplishments: consolidated two independent Personnel Departments (resulting from merger of two community hospitals) into what eventually became viewed as the finest personnel support program in the State of Virginia; developed a Wage and Salary program; established an Affirmative Action program; developed a management audit program; developed an employee educational program in conjunction with area universities; initiated programs in Organization Development and Management Development.

August 1974 - April 1975

MEDICAL CENTER HOSPITAL, Norfolk, VA
Administrative Resident
preformed duties of a general hospital administrator while completing academic and residency requirements for Master's Degree.
Master's Thesis: Management

WORK EXPERIENCE

Information Systems.

November 1970 - August 1973

RICHMOND COMMUNITY HOSPITAL, Richmond, VA
Hospital Administrator in this 25 bed urban general hospital. Responsible for administering, coordinating personnel activities to promote care of sick and injured. Carried out program under established policies and general direction from governing body; negotiated contracts for improvement of additions to buildings and equipment; directed, coordinated activities of medical, nursing and administrative staffs and services; developed policies and procedures for various hospital activities. Prepared the first budget for the Hospital. Prepared and submitted an annual detailed budget consisting of patient load and service level forecast, payroll budget, supply budget, expense budget, capital equipment budget, and cash flow projections to the Board of Directors for approval. Negotiated reimbursement contracts with third party payers.

WORK EXPERIENCE

Major Accomplishments:
Promoted public relations through various news media including conducting biweekly radio program; reduced accounts receivable days outstanding from 174 to 60 days; instituted bulling procedures that reduced average turnaround time for third party payers from 130 to less than 32 days. Developed and implemented a utilization review/patient audit program.

MILITARY EXPERIENCE

November 1950 - November 1970

ASSISTANT ADJUTANT GENERAL--planned, directed all phases of personnel management activities. Organized, controlled personnel management, personnel utilization programs, directed, controlled pay administration program for a command of 22,000 personnel. Served as Deputy and/or Commander of various organizations.

Military Decorations:
Meritorious Service Medal for outstanding meritorious service; two Bronze Star

MILITARY EXPERIENCE

medals for meritorious service; two Army Commendation Medals for meritorious achievement; Army Commendation Medal for meritorious service.

ACADEMIC APPOINTMENTS

LINCOLN UNIVERSITY - Jefferson City, MO
Military Science Instructor

MESHED UNIVERSITY - Meshed, Iran
Adjunct Instructor on Social Problems in America

PRAIRIE VIEW A & M UNIVERSITY - Prairie View, TX
Military Science Instructor. Organized the Prairie View Philosophical society; served as Society's first faculty advisor.

LECTURES/SPEECHES

Participant in panel discussion, "Need for Blacks in Hospital Management," Virginia Commonwealth University, Richmond, VA.

Presented paper, "Decision Making Role of Blacks in

LECTURES/SPEECHES

Hospitals in Richmond, VA," Virginia Union University, Richmond, VA.

Presented paper, "The Expectations of the Black Executive," Society for the Advancement of Management, Richmond, VA.

Participant in panel discussion, "Role of Personnel Department in a Modern Hospital," Virginia Commonwealth University.

Presented paper, "The role and Function of the Hospital Personnel Department," Virginia Association of Hospital Personnel Administrators, Virginia Beach, VA.

Presented paper, "Human Resources Management," Annual Triad--Administrators, Trustees and Physicians--Conference of Virginia, Williamsburg, VA.

Presented paper, "The Absence of Black Decision/Policy Makers in the Health Care Industry," University Without Walls Public Forum, Baltimore,

LECTURES/SPEECHES

MD.

PROFESSIONAL ORGANIZATIONS

Fellow, American Academy of Medical Administrators.
Member, American Society for Hospital Personnel Administration.
Member, National Association of Health Services Executives.
Member, National Business League.
Member, American Society of Health care Risk Management of the American Hospital Association.

RECOGNITIONS AND HONORS

Selected by US Army to serve as a Military Advisor to the Shah of Iran.

Elected Class President, University of Alabama in Birmingham.

PUBLIC SERVICE

Appointed to Govern's Commission (Virginia) to White House Conference on the Aged. Served as a member of the Health Services Subcommittee 1972.

PUBLIC SERVICE

Appointed to Richmond (Virginia) Planning District Commission. Member of Task Force on Medical Services and Public Health in 1973.

Served with Model Neighborhoods Program of Richmond (Virginia). Member of Social Services Committee 1972-1973.

Co-Chairman, Area Three of the American Academy of Medical Administrators, 1973-1978.

Executive Member, Norfolk State College Health Sciences and Services Advisory Committee, 1975-1976.

Member, Labor-Management Relations Committee, Virginia Hospital Associations, 1975-1976

Member, Chief Executive Officers' Planning Committee, Maryland Hospital Associations, 1976-1977

Chairman, continuing Education Committee, and

LECTURES/SPEECHES

member Executive Committee, The Alumni Association of the School of Hospital Administration, Medical College of Virginia, 1977-1979.
Legislative Liaison, Baltimore-Washington chapter, National Association of Health Services Executives, 1977-1979.

Member, Community Support Program Committee, federally funded Community Support Project, 1979, Minneapolis, MN.

Member, State (Minnesota) Mental Health Advisory Committee, 1979.

Chairman, Inpatient Facilities Committee, federally funded Community Support Project, 1979 Minneapolis, MN.

Member, Minneapolis Urban League Health Task Force, 1979.

Member, Advisory Council, Hypertension Control Unit, Albany Chapter American Red Cross, Albany, NY 1984-1985.

Member, Public Education

PUBLIC SERVICE

Committee, American Cancer Society, NYS Division, Albany, NY 1984-1985.

Member, Board of Directors, Community Health Care Assoc. of NYS, 1984-1985.

Member, NYS Minority Task Force Developmental Disabilities Planning Council, Albany, NY 1984-1985.

Institutes, Seminars, Workshops and Conferences

St. Lois University--Catholic Hospital Association (1974). Seminar on New Techniques for Applied Financial Budgeting.

American Society for Hospital Personnel Administration (1975). Workshop on Counter-Measures for Employee Dissatisfaction.

American Hospital Association (1975). Advanced Institute on Personnel-Labor Relations.

"A Team Effort in Managing Quality Care," Central New York Hospital Association Annual Membership Program,

Institutes, Seminars, Workshops and Conferences

Syracuse, NY, November 16,1988.

"Quality Assurance Conference," Fitzsimons Army Medical Center, Aurora, CO, January 9 - 13, 1989.

"Quality Assurance and Risk Management in Hospital Clinical Support Service," JCAHO, Pittsburgh, PA, April 18 - 19, 1989.

"Quality Assurance Conference," McDonald Army Community Hospital, Fort Eustis, VA, July 24 - 28, 1989.

"Quality Assurance Coordinator's Short Course," Fitzsimons Army Medical Center, Aurora, CO, August 14 - 18, 1989.

Charlotte B. Rogers, O.T.R., M.B.A.
100 Ridgecrest Drive
Franklin, Tennessee 37064
Home (615) 790-8570 Office (615) 322-0100

EDUCATION

Master of Business Administration, Vanderbilt University, Owen Graduate School of Management, Nashville, Tennessee, 1986

Bachelor of Science, Kansas University, Lawrence, Kansas, 1970

- Major: Occupational Therapy
- Minor: Physiology and Psychology
- Student Advisory Council, Occupational Therapy Program, 1968-69
- Student Union Advisory Board, 1967-69
- Officer, Delta Delta Delta Sorority
- Completed internships in Georgia, Hawaii, Wisconsin, New York

EXPERIENCE

VANDERBILT UNIVERSITY MEDICAL CENTER, Nashville, Tennessee, 1981-1989
Director of Occupational Therapy, Occupational therapy Department, 1981-Present

- Created and developed department with annual revenue of $1.3 million, the largest and most diversified Occupational Therapy Department in Tennessee
-

Personnel:

- Train and manage thirty employees including five Occupational Therapy Supervisors, three Recreation Therapists and three Secretaries

- Recruit staff by networking with other local health care facilities, and advertising in national and local print media

Education:

- Plan, coordinate and present a variety of inservice training programs
- Publicized and coordinated regional workshop with nationally recognized speakers for occupational therapists and physical therapists, March 1987
- Established occupational therapy student internship programs with twelve universities throughout the United States and Nashville State Technical Institute. supervise Field Work Coordinator in administering the program
- Adjunct faculty member of University of South Carolina, Tuskegee University and Nashville State Technical Institute
- Serve on the Advisory Council to the Occupational Therapy Assistant Program at Nashville State Technical Institute, 1983-Present

Budget:

- Develop and manage annual budget for Occupational Therapy Department, Recreation Therapy Department and Joint Rehabilitation Services

Development:

- Developed facility design for initial Occupational Therapy Department (1983) and outpatient rehabilitation facility (1988). worked with architects,

contractors and program planning staff to implement design. Supervised relocation of the department to new facility

- Determine equipment and supply needs for the department

- Market occupational therapy program to physicians and other referral sources

- Develop protocol manuals for special occupational therapy programs. Present new programs for administrative approval

- Participate in planning, establishing and/or administering new units and programs including: the Burn Unit, Inpatient Rehabilitation Unit, Vanderbilt Institute and Treatment of Addiction, and Day Treatment Center Geriatrics

- Support fundraising efforts of the Junior Chamber of commerce to raise approximately $150,000 annually for indigent patients and the clinics

- Develop procedure manuals and insure compliance with standards of Joint commission on Accreditation of Hospitals

- Developed Management by Objectives plan

Organization:

- Implemented computerized systems for gathering statistics, inventory, budget and wordprocessing in the department

- Developed, and currently implement quality assurance plan for department

- Participate in quality Assurance Monitoring Committee meetings for medical center

- Participate in re-organizing three departments to function together in a centralized facility

Chief Occupational Therapist, Adult Psychiatry, February-November 1981

- Developed and implemented occupational therapy treatment program for adult psychiatric population

- Presented inservice training programs

- Promoted to Director of Occupational Therapy

UNIVERSITY OF NORTH CAROLINA, January-December 1980
Occupational Therapy Consultant and Visiting Lecturer, Division for Exceptional Children, North Carolina Department of Public Instruction, and Occupational Therapy Division

- Developed and recruited personnel for occupational therapy positions in North Carolina school systems. Provided support and information to Occupational Therapists

- Trained teachers across the state to improve their shills in providing education for students with a variety of mental and physical handicaps

- Lectured at workshops for health care professionals on occupational therapy treatment

- Wrote instruction book on handling and feeding handicapped children which was used in school systems

HEAD START AND PARENT/CHILD CENTER
Chief Occupational Therapy Consultant, Mental Health, Handicap Resource Team,
Chattanooga, Tennessee, 1976-79

- Implemented occupational therapy for children one month to five years of age
- Provided consultation and training to teachers, parents, home visitors, and other Head Start and Parent/Child Center personnel
- Produced video tapes for use in training
- Wrote instruction book on handling and feeding handicapped children which was use in school systems

BRISTOL MEMORIAL HOSPITAL, EXTENDED CARE FACILITY
Occupational Therapy Consultant, Bristol, Tennessee-Virginia, 1973-75

- Directed volunteer program designed to meet the diversional, recreational and emotional needs of patients
- Provided occupational therapy treatment to referred patients

EAST TENNESSEE CHILDREN'S REHABILITATION CENTER
Chief Occupational Therapist, Knoxville, Tennessee, 1971-73

- Provided occupational therapy treatment to children and adults
- Consulted with and trained families of patients, staff and graduate students at the University of Tennessee

MILWAUKEE COUNTY MENTAL HEALTH CENTER, SOUTH DIVISION
Staff Occupational Therapist, Milwaukee, Wisconsin, 1970-71

- Implemented occupation therapy and diversional activities for clients

PROFESSIONAL MEMBERSHIPS

American Occupational Therapy Association, 1970-Present

- Recipient of The American Occupational Therapy Association's Communication Award for significant work in communications through the Occupational Therapy/Physical Therapy Special Project in North Carolina, 1980

Tennessee Occupational Therapy Association, 1971-Present

- State Certification, 1988

- Third Party Reimbursement Chairman, State Association, 1987-88. Maintain current knowledge of reimbursement issues through training programs, committee meetings and mailings. Develop plan of action for TOTA to negotiate for improvement of third party reimbursement

- Secretary, State Association, 1987

- Member of committee that obtained State Certification for Occupational Therapy 1985

- Recipient of "Certificate of Appreciation" from Tennessee Occupational Therapy Association, 1984

- District Chairman, Nashville District, 1981

- District Chairman, Chattanooga District, 1974
- District Chairman, East Tennessee District, 1971

COMMUNITY PARTICIPATION

Project Pencil, Vanderbilt/Harris Hillman School, 1986-1989

- Coordinating Committee, Children's Health Fair, The Mall at Green Hills March 1987

Parent Teacher Association, Battle Ground Academy, 1986-Present

Episcopal Diocese of Tennessee, 1986-Present

- Clergy Family Support Task Group

Episcopal Church of the Resurrection, 1983-Present

- Sponsor, Episcopal Young Churchmen (youth group)
- Women of the Church

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CURTIS L. WRENN,

Plaintiff,

vs No 3-91-1005

VANDERBILT UNIVERSITY
HOSPITAL,

Defendants.

MOTION FOR LEAVE OF COURT TO FILE FIRST AMENDED COMPLAINT COMES NOW the plaintiff pursuant to the Federal Rules of Civil Procedure (FRCP), Rule 15(a), and respectfully moves this Court for leave to file an Amended Complaint. This court should grant said motion for the reasons and upon the basis set forth in the accompanying Memorandum in Support, attached hereto and made a part hereof as if fully rewritten.

/s/ Curtis L. Wrenn
Curtis L. Wrenn

MEMORANDUM IN SUPPORT

The original complaint in the instant action essentially seeks redress for racially motivated employment

discrimination against the plaintiff. at the hands of the defendants.

That original complaint was filed December 10, 1991 and alleges violations of 29 USC 623 et seq., and 42 USC 1981, 1983, 1985, 2000d and 2000e. The plaintiff now seeks leave to amend his complaint to include violation of the Freedom of Information Act (FOIA); violation of the Civil Rights Act of 1991; AND a conspiracy to violate his rights, privileges and immunities secured by the Constitution and laws of the United States.

In relevant part Rules 15(a) provides that:

> "A party ... may amend his pleading once as a matter of course ... (And) otherwise ... only by leave of court ... and leave shall be freely given when justice so requires ...

As stated by the United States Supreme Court in Foman v. Davis, 371 U.S. 178, 9 L.E. 2d 222, 83 S.Ct. 227 (1962), construing that rule of procedure:

> "If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason -- such as

> undue delay, bad faith or dilatory motive on the part of movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave sought should, as the rules require, be "freely given."

Undoubtedly the most important factor to be considered in granting or withholding leave to amend is prejudice to the defendant if amendment is allowed. United States v. Home Indemnity Ins. Co., 246 F. Supp. 27 (D.C. PA 1965). Such prejudice should be actual prejudice to the defendant, and should be prejudice occasioned because of the delay, such as where an important witness has died after the complaint's longstanding pendency. Boris v. Moore, 253 f.2d 523 (7th Cir., 1958). Leave should be granted when, as here, the amendment is sought with reasonable promptness after new facts are known and no prejudice is demonstrated. Johnson v. Oroweat Foods Co., 785 F.2d 503 (4th Cir. 1986).

Clearly, the defendant in the present action would in no way be prejudiced by the proposed amendment.

Accordingly, plaintiff's Motion for leave to file his First Amendment to his complaint, of which a copy is attached hereto and made a part hereof as if fully rewritten and designated as Exhibit 1, should be granted.

Respectfully submitted,

/s/ Curtis L. Wrenn

Curtis L. Wrenn, Pro Se

95 Champion Street
West Carthage, NY 13619
Tel: (315) 493-4028

CERTIFICATE OF SERVICE

I certify that a copy of this Motion to Amend, with Exhibit 1, was hand delivered to Tim K. Garrett, Esq., on September 30, 1992.

/s/Curtis L. Wrenn

Curtis L. Wrenn

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CURTIS L. WRENN,

Plaintiff,

vs No 3-91-1005

VANDERBILT UNIVERSITY
HOSPITAL,

Defendants.

PLAINTIFF'S FIRST AMENDMENT TO COMPLAINT

COMES NOT the plaintiff and submits the following amendments to the original complaint herein. With the exceptions set forth below, that original complaint shall be deemed to be the same in force and effect as the form is which it was originally filed.

The following defendants to be added to captioned:

ATTORNEY GENERAL OF THE UNITED
STATES DEPARTMENT OF JUSTICE
10th and Pennsylvania Avenue, NW
Washington, D. C. 20530

-and-

HONORABLE LOUIS SULLIVAN, SECRETARY
U.S. DEPT OF HEALTH AND HUMAN
SERVICES
200 Independence Ave., SW
Washington, D. C. 20430

-and-

EVAN J. KEMP, JR., CHAIRMAN, U.S.
EMPLOYMENT OPPORTUNITY COMMISSION
1801 "L" Street, NW
Washington, D. C. 20507

-and-

JOHN C. CALLISON, ESQ.
INDIVIDUALLY AND AS ASSISTANT
GENERAL COUNSEL
Office of the General Counsel
Vanderbilt University
Nashville, TN 37240,

Defendants.

Add the following to paragraph 5 (Jurisdiction):

"Also, jurisdiction is invoked under the civil rights Act of 1991 AND the Freedom of Information Act."

Add the following the "COUNT II", paragraph 8:

"Defendant Callison and the Federal Defendants (Department of Justice, Department of health and Human Services, and the Equal Employment Opportunity

Commission) have conspired to deprive the plaintiff of rights, privileges and immunities secured by the Constitution and laws of the United States including, but not limited to, the right to equal employment opportunity AND the right to seek legal redress against those who discriminated against him, in violation of titles VI and VII, the ADEA and the Civil Rights Acts of 1866 and 1991 (Ex 2). The Federal Defendants have conspired to violate the plaintiff's civil, legal and constitutional rights by, among other things, refusing to enforce titles VI and VII (refusal to process and/or investigate the plaintiff's complaint, and refusing to take action against public and private employers who unlawfully denied him employment); aiding and abetting public and private employers in defending actions filed by the plaintiff against them; unlawfully covering up their activities by refusing to provide records, documents and things requested by the plaintiff; and by falsely accusing the plaintiff of criminal acts and making public those false allegations, in an effort to defame, slander and stigmatize his name so as to prevent his

employment in his chosen profession of hospital and health care administration. As a direct and proximate result of the said defendants' violations, the plaintiff has suffered and will continue to suffer those damages for which relief is sought as set forth hereinafter. (Exhibits 1,2,3, and 4)".

Add the following to "V. PRAYER FOR RELIEF":

"6. That the defendants be directed to cease and desist their unlawful activities against the plaintiff.

"7. that the Federal Defendants be ordered and/or directed to provide any and all documents and things, of whatever kind or nature, requested by the plaintiff pursuant to the FOIA."

The balance of the original complaint herein shall be deemed to remain unchanged.

Respectfully submitted

/s/Curtis L. Wrenn

Curtis L. Wrenn

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

CURTIS L. WRENN,

Plaintiff, No 3-91-1005

vs JUDGE NIXON

VANDERBILT UNIVERSITY
HOSPITAL, et al.,

Defendants.

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT EEOC'S REQUEST FOR DISMISSAL AND EEOC'S REQUEST FOR FEES AND COSTS AND PLAINTIFF'S CROSS-MOTION FOR RULE 11 SANCTIONS AND COST

COMES NOW the plaintiff to file this memorandum in opposition to the EEOC's request for dismissal and request for fees and costs. Moreover, the plaintiff submits this memorandum as his cross-motion for sanctions, fees and costs as provided by Rule 11 of the Federal Rules of Civil Procedure, and as provided by the Freedom of Information Act (5 USC 552(a)(4)(E) and (F)). A Memorandum in

Support is provided.

Respectfully submitted

/s/ Curtis L. Wrenn

Curtis L. Wrenn

MEMORANDUM IN SUPPORT

1. The Defendant EEOC in its Answer to Plaintiff's First Amended Complaint, "prays that this action be dismissed, that defendant Kemp be awarded fees and costs ..." For the reasons set forth herein the plaintiff prays that the request will be denied.

2. The court is being asked to determine the "real" reason the EEOC refused to provide the information which the plaintiff requested under the FOIA (Exhibit 1). Moreover, the court is being asked to determine whether the EEOC has conspired to aid and abet public and private employers against him, AND whether that agency's unlawfully deprived the plaintiff of information under the FOIA. The plaintiff has demonstrated that the EEOC: (1) has refused to investigate his charges of unlawful employment discrimination, (2) has

unlawfully informed others of his charge filing activities, and (3) refused to provide information under the FOIA. Instructive is a recent case decided by the DC Circuit Court of appeals (Exhibit 2: Wrenn v. Kemp, docket No 91-5382, December 2, 1992).

3. The plaintiff's primary argument against the EEOC is that "but for" the refusal to respond to his FOIA appeal at Exhibit 1, this action would not have been necessary. More importantly, by denying the plaintiff the information requested under the FOIA, the EEOC has deprived him of information essential for the prosecution of this case.

4. Based on the foregoing, the EEOC knew or should have known that it had violated the FOIA by refusint to respond to the plaintiff's appeal of the denial information requested by the plaintiff. Moreover, the refusal to respond to the appeal was intentionally and maliciously done, for the sole purpose of depriving the plaintiff of information concerning the unlawful activities of the EEOC. Wherefore, the EEOC's request for dismissal and request for fees and

costs must be denied. Moreover, the plaintiff's request for fees and costs, as provided for by Rulle 11 and the FOIA must granted, for the malicious intentional continuing unwarranted action by the EEOC.

Respectfully submitted.

/s/Curtis L. Wrenn

Curtis L. Wrenn, Pro Se
95 Champion Street
West Carthage, NY 13619
Tel: (315) 493-4028

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed to Kaghleen Oram, Esq., EEOC, 1801 L. Street, NW, Washington, DC 20507 via U. S. mail, postage prepaid, this 12th day of February, 1993.

/s/Curtis L. Wrenn

Curtis L. Wrenn

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

CURTIS L. WRENN.

Plaintiff. No 3-91-1005

vs JUDGE NIXON

VANDERBILT UNIVERSITY
HOSPITAL, et al.,

Defendants.

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGEMENT

COMES NOW the plaintiff to submit this memorandum in opposition to the defendants' motion for summary judgment. This case is not "ripe" for summary judgment, in that the court is being asked to determine why the plaintiff has been denied EVERY position which he has applied for with the defendants since July 1978. The primary argument is that summary judgment is not appropriate for cases, such as this, which involve important public issues. One issue is the defendants' pattern and practice of denying equal employment opportunity to the plaintiff. This court is being asked to

examine the defendants' hiring policies and procedures to determine whether a systemic discriminatory practice exists to exclude the plaintiff from employment in his chosen profession of hospital and health care administration.

Respectfully submitted,

/s/Curtis L. Wrenn

Curtis L. Wrenn, Pro Se

MEMORANDUM IN SUPPORT

A. LEGAL ARGUMENT:

1. The defendants would have us believe that there are no issues to be decided and therefore they are entitled to summary judgment in their favor. In reviewing the defendants' motion, the court must consider the pleadings, related documents, incorporated exhibits and other admissible evidence, and all reasonable inference in a manner most favorable to the non-moving party. See, Adickes v. Kress & Co., 398 U.S. 144, 90 S. Ct. 1598, 26 L.Ed.2d 142 (1970). Moreover, the principle is well established that summary judgment is generally inappropriate in cases, such as this, involving questions of motive or intent. Conrad v. Delta Airlines, Inc., 494 F.2d 914, 919 (7th Cir. 1974). In the case at bar, the court is being asked to determine why the plaintiff was denied consideration for employment when less qualified individuals, including the person hired, were interviewed and given other considerations.

2. All of the evidence before the court on a summary

judgment motion must be construed in the light most favorable to the non-moving party. Also, the moving party bears the burden of proving conclusively that no genuine issue of material fact exists. See, e.g., Smith v. Hudson, 600 F.2d 60 (6th Cir., 1976). The defendants have not demonstrated that there are no issues to be decided. More specifically, the defendants have not demonstrated that: (1) the plaintiff did not meet the stated qualifications for the position at issue, and (2) that the person hired was as or more qualified than the plaintiff.

3. It is clear that the burden is on the moving party seeking summary judgment to clearly establish the nonexistence of any material issue of fact. See, e.g., United States v. Articles of Device, 527 F.2d 1008, 1011 (6th Cir., 1976). In applying that standard, courts have held that the evidence supporting the motion will be "closely scrutinized" while that of the opposing party should be "indulgently treated". Bohn Aluminum & Brass Corp. v. Storm King Corp., 303 F. 2d 425, 427 (6th Cir., 1962). Thus, a motion

for summary judgment can be granted only if the reviewing court is satisfied that a properly instructed jury, giving full weight to plaintiff's evidence, trying ever reasonable inference in his favor, and subjecting defendants' evidence to a critical mind, could not rationally have found that the plaintiff was entitled to any relief. See Hawes Office Systems, Inc. v. Wang Laboratories, Inc., D.C.N.Y. 1973, 524 Supp 610.

4. Where conflicting inferences may be drawn from the evidence before the court on a motion for summary judgment, the court must draw those inferences against the movant and in favor of the non-movant. See, e.g., United States v. Diebold, Inc., 369 U.S. 654, 82 S. Ct. 993, 8 L.E.2d 176 (1962); Adickes, supra. The plaintiff's unrefuted allegation is that, based on his qualifications, he was denied equal employment opportunity because of his race, age and retaliation for his previous opposition to the employer's practice of denying HIM employment.

5. Complicated cases and cases involving public issues, such as in this case, are examples where summary

adjudication are undesirable. See Board of Education, Island Trees Union Free School District No. 26 v. Pico, 457 U.S. 853, 102 S. Ct. 2799, 73 L.ED2d 435 (1982). Thus, summary judgment should not be granted lightly, and if there is the slightest doubt as to facts, the non-moving party has the right to a trial. See Cur & General Insurance Corporation v. Goldstein, D.C.N.Y. 1959, 179 Supp 888, affirmed 277 f.2d 162.

6. While it is clear that a summary judgment may be rendered solely on the basis of affidavits, affidavits are the least trustworthy basis, since the affiand has not been subject to cross-examination and his demeanor is not observable. See Long V. bureau of Economic Analysis, 646 f.2d 1310 (9th Cir. 1981). However, the party moving for summary judgment has the burden of clearly establishing the lack of any triable issue of fact by the record properly before the court. See Bell v. Cameron Meadows Land Co., 669 F.2d 1278 (9th Cir. 1982) (a motion for summary judgment places an affirmative burden on the moving party to demonstrate the

absence of genuine issues of material facts and to show that he is entitled to judgment as a matter of law). Also, the moving party's papers are carefully scrutinized; and those of the opposing party are on the whole indulgently regarded. The non-movant's version of the facts must be accepted, and all disputed matters must be resolved in his favor. See United States v. Diabold, 369 U.S. 654, 655, 82 S. Ct. 993, 8 L.Ed.2d 176 (1962) ("On summary judgment the inferences to be drawn from the underlying facts contained in such materials must be viewed in the light most favorable to the party opposing the motion.")

B. STATEMENT OF THE MATERIAL FACTS AS TO WHICH THE PLAINTIFF CONTENDS THAT THERE EXISTS GENUINE ISSUES.

1. This is an employment discrimination case in which the plaintiff alleges that he was denied employment because of his race (Negroid), age (date of birth February 14, 1930) and retaliation (because of his previous opposition to employment practices made unlawful by the Constitution and laws of the United States). The relevant facts in plaintiff's

complaint are set forth in the written pleading and in the incorporated written exhibits. Under Federal Rules of Civil Procedure 10(C), such exhibits are a part of the pleading for all purposes. Foshee v. Daoust Const.Co., 185 F.2d23 (CA Ind. 1950). Plaintiff's complaint, including the exhibits, set forth his race, age, qualifications, rejection without explanation, and the apparent consideration given to members not of his protected class with equal or lesser qualifications than the palintiff. these allegations satisfy the test under McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) to establish a prima facie case of impermissable hiring practices.

2. The court must infer the requisite impermissable motivation from evidence of actions meeting the McDonnell Douglas criteria, in the absence of a plausible, legitimate explanation from the defendants for the plaintiff's nonselection. See Daye v. Harris, 210 U.S. App., D.C. 145, 655 F.2d 258 (1981).

3. The burden of offering legitimate, nondiscriminatory reasons belongs to the defendants. the

plaintiff has the opportunity to show that the reasons offered by the defendant are a sham, or mere pretext. McDonnell Douglas, supra. The McDonnell Douglas approach is applicable to "comparative-evaluation" cases, such as the instant case. Garner v. Boorstin, 690 f.2d 1034 (DC Cir. 1982). At issue in this case is why less qualified applicants were considered for employment.

4. Evidence of an employer's general hiring and promotion practices may be presented as circumstantial evidence (in the case the plaintiff has been denied employment for least four jobs, dating back to July 1978, by the Vanderbilt University Hospital) of discriminatory treatment in an individual case of discrimination, and may in and of itself, without proof of specific instances of discrimination, establish a prima facie of discrimination. Davis v. Califano, 198 U.S. App. DC 224, 613 F.2d 957 (1980).

5. For an employer to justify discrimination with respect to compensation, terms, conditions or privileges of employment, it is necessary for the employer to demonstrate

that legitimate and overriding business considerations provide justification for the practice. See Domingo v. New England Fish Co., 727 F.2d 1429 (CA Wash. 1984).

6. In summary, this is a mixed-motive case (See Price Waterhouse v. Hopkins, Cert. to CA DC, Case No 87-1167 U. S. Sup Ct., (1989), 57 LW 4472, 4473) concerning the defendants continuing pattern and practice of denying the plaintiff equal employment opportunity. Thus the primary issue to be decided by the court is whether the defendants would have hired the plaintiff "but for" his race and age, and retaliation. See Kauffman v. Sidereal Corp (CA 9th Cir. 1982), 677 F.2d 767, 28 BNA FEP Case 1605.

7. This case turns on the subjective selection criteria and hiring practices used by the defendants to deny employment to the plaintiff. the subjective system used to deny employment to the plaintiff cannot be justified on the basis of business necessity. See, e.g., Watson v. Fort Worth Bank & Trust, U.S. Sup. Ct. No 86-6139, 6/29/88, 57 LW 1002, July 5, 1988.

8. the defendants have not presented any admissible evidence to justify denying the plaintiff employment. the facts do not demonstrate that the palintiff was denied employment for a legitimate reason. See, e.g., Connecticut v. Teal, 102 Sup. Cut. 2525 (1982), where the court held:

> "Section 703(a)(2) prohibits practices that would deprive or tend to deprive "any individual of employment opportunities' ..." Every man must be judged according to his ability. In that respect, all men are to have an equal opportunity to be considered for a particular job' ..."

The court is being asked to review the facts in the case and to decide that more likely than not the plaintiff was denied employment not as the result of some legitimate business reason BUT solely because of his race and/or retaliation and/or his age. Whatever the REAL reason, the defendants have not demonstrated that the plaintiff was denied employment for a legitimate reason.

9. Based upon the foregoing, a line of decisions by the Supreme court hold that the defendants have not met their burden in this case, in that they have not demonstrated a

legitimate nondiscriminatory reason for its employment practices which have resulted in the plaintiff being repeatedly denied employment. See, e.g., Furnco Constr. Corp. v. Waters, (1978) 438 US 567, 5 L Ed.2d 957, 98 S. Ct. 2943. See also, Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 254, 101 S01 S. Ct. 1089, 1094, 67 L.Ed.2d 207 (1981).

10. Moreover, the plaintiff has successfully demonstrated the pretextual nature of the defendants' failure to hire him based on the facts in evidence. The court must now decide whether the foregoing and the following issues are legally sufficient to preclude the award of summary judgment in the defendants' favor. The court is being specifically asked to decide whether, in the absence of a plausible, legitimate explanation for the defendants' conduct in repeatedly denying the plaintiff employment, an inference of impermissable conduct more likely than not motivated the defendants' action against the plaintiff:

a. Plaintiff's qualifications. See resume.

ISSUE: Did the plaintiff meet the stated qualifications for each position which he applied? If so, why was he not given equal employment opportunity.

b. The resume of the successful applicant.

c. Vanderbilt's hiring procedure.

ISSUE: Did the defendants violate their policies and procedures in not including the plaintiff in the pool of qualified applicants.

C. CONCLUSION:

In addition to the foregoing, a few further cogent observations regarding the granting of summary judgment in the contest of an employment discrimination suit, and particularly one involving allegations of retaliation, are in order. The federal courts have repeatedly recognized the general impropriety of granting summary judgment where "state of mind" issues are involved. See, e.g., Poller v. Columbia Broadcasting System, Inc., 368 U.s. 464, 473 (1961); Hahn v. Sargent, 523 f.2d 461, 468 (1st Cir., 1975), cert. den.,425 U.S. 904 91976) (question of subjective bad

faith in immunity defense to alleged civil rights violation); Maiorana v. MacDonald, 596 f.2d 10272, 1077 (1st Cir., 1979) (same issue as in Hahn); Cf., U.S. Postal Service board of Governors v. Aikens, ___U.S.___, 105 S. Ct. 2117, 31 F.E.P. 609, 611 (1983) (recognizing virtual impossibility of proving intent in title VII litigation).

Further, it has been recognized that summary judgment is particularly inappropriate in the context of employment discrimination retaliation claims. See, Romero v. Union Pacific R. R., 615 f.2d 1303, 22 F.E.P. 338, 343 (10th Cir., 1980); Keys v. Lutheran Family Services, 668 f.2d 356, 29 F.E.P. 253, 254-255 (8th Cir., 1981).

Accordingly, it is respectfully urged that the defendants' motion for summary judgment be denied. this court should direct that the case proceed to trial.

Respectfully submitted,

/s/Curtis L. Wrenn

Curtis L. Wrenn, Pro Se

95 Champion Street
West Carthage, NY 13619
Tel: (315) 493-4028

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed to Tim K. Garrett, Esq., BASS, BERRY & SIMS, First American Center, Nashville, TN 37238-2700, this 26th day of Feb, 1993, via U. S. Mail, first class postage prepaid.

/s/Curtis L. Wrenn
Curtis L. Wrenn

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

CURTIS L. WRENN,

Plaintiff, No 3-91-1005

vs JUDGE NIXON

VANDERBILT UNIVERSITY
HOSPITAL, et al.,

Defendants.

PLAINTIFF'S MATERIAL FACTS IN SUPPORT OF HIS OPPOSITION TO DEFENDANT VANDERBILT'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF HIS STATEMENT THERE ARE ISSUES TO BE DECIDED BY THE COURT IN THIS CASE OF EMPLOYMENT DISCRIMINATION

COMES NOW the plaintiff to submit the following incorporated exhibits to demonstrate that there are issues to be decided by the court. Specifically, what was the "real" reason for the employer's refusal to hire the plaintiff? Why was the plaintiff excluded from the pool of qualified applicants, when other less qualified applicants (as demonstrated by the hiring of Charlotte B. Rogers) were considered? The exhibits support the plaintiff's contention

that summary judgment is only appropriate "where the evidence is such that a reasonable jury could not return a verdict for the nonmoving party." Washington Post Co. v. U.S. Dept. of Health and Human Services, 865 F2d 320, 325 (D.C. Cir. 1989), quoting Anderson v. Liberty Lobby, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). also, that the defendant has not met its burden of showing that there is no genuine issue for trial. Fed. R. Civ. P. 56(e). See Laningham v. U.S. Navy, 813 F.2d 1236, 1241 (D.C. Cir. 1987):

A - Plaintiff's Resume. Exhibit 2, pages 8-15, of the original complaint.

B - Resume of Charlotte B. Rogers. Exhibit 2, pages 16-18, of the original complaint.

C - The Deposition of John C. Callison, including but not limited to Exhibits 1 and 2 thereof.

D - The Deposition of Donald Edwin Hancock, including but not limited to Exhibit, 1, 2, 3, and 4. The Exhibits do not support the employer's contention that it had a legitimate reason for hiring Ms. Rogers and for rejecting the plaintiff's application, without an interview.

Respectfully submitted

/s/ Curtis L. Wrenn
Curtis L. Wrenn, Pro Se

95 Champion Street
West Carthage, NY 13619
Tel: (315) 493-4028

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed to Tim K. Garrett, Esq.

/s/ Curtis L. Wrenn

Curtis L. Wrenn

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

CURTIS L. WRENN,

Plaintiff, No 3-91-1005

vs

VANDERBILT UNIVERSITY HOSPITAL, et al., JUDGE NIXON

Defendants.

PLAINTIFF'S MATERIAL FACTS IN SUPPORT OF HIS OPPOSITION TO DEFENDANTS DEPARTMENT OF JUSTICE AND HHS' MOTION TO DISMISS AND IN SUPPORT OF HIS STATEMENT THAT THERE ARE ISSUES TO BE DECIDED BY THE COURT IN THIS CASE INVOLVING CIVIL CONSPIRACY

COMES NOT the plaintiff to submit the following incorporated exhibits to demonstrate that there are issues to be decided by the court. Specifically, the defendants have provided no specific facts to overcome the plaintiff's claim that the federal defendants have conspired with the Defendant Vanderbilt and others to prevent his employment as a hospital and health care administrator:

1. this case is not "ripe" for summary dismissal because, among other things the defendants have not

demonstrated that there are no issues to be decided by the court. Plaintiff submits that there are genuine issues to be decided. More specifically, the court is being asked to decide whether, on the basis of the facts, the defendants used lawful and unlawful means to deprive the plaintiff of rights, privileges and immunities, secured by the Constitution and laws of the United States, by among other things:

(1) Aiding and abetting those who denied him equal employment opportunity by, among other things, providing aid and assistance to them, while refusing to assist the plaintiff in his efforts to seek legal redress. See Exhibits 1, 3, and 6.

(2) Refusing to process and/or investigate the plaintiff's complaints. See Exhibits 2 and 5.

(3) Refusing to provide requested records, documents, and information in response to plaintiff's FOIA requests. See Exhibits 1,3,4, and 5.

(4) Aiding and assisting a convicted drug trafficker, while refusing to respond and/or refusing to assist

the plaintiff. See Exhibits 5, 6, 7, and 8.

2. Based on the foregoing, there are issues to be decided by the court. More specifically, the court is being asked to decide the following:

(1) Whether the defendants conspired to deprive the plaintiff of employment in his chosen profession of hospital and health care administration by, among other things, providing aid and assistance to the legal counsel and other agents of Vanderbilt.

(2) Whether on the basis of the facts at Exhibits 1 through 8, Defendants HHS and Department of Justice have conspired against the plaintiff Or whether the actions were abuse of discretion. If the latter, whether the actions were intentionally done to deprive the plaintiff of the opportunity to seek legal redress.

(3) Whether HHS and its legal counsel (Defendant Department of Justice) have orchestrated a conspiracy involving the courts, federal agencies, public and private employers to deprive the plaintiff of equal treatment

before the law, and to deprive him of his civil, legal and constitutional rights.

3. In summary, the exhibits support the plaintiff's contention that summary judgment is only appropriate "where the evidence is such that a reasonable jury could not return a verdict for the non-moving party." Washington Post Co. v. U. S. Dept. of Health and Human Services, 865 f.2d 320, 325 (D.C. Cir. 1989), quoting Anderson v. Liberty Lobby, 477 U.S. 242, 248, 106 s. Ct. 2510 (1986). Also, the defendants have not met their burden of showing that there are no genuine issues for trial. Fed. R. Civ. P. 56(e). See, e.g., Laningham v. U.S. Navy, 813 F.2d 1236, 1241 (D.C. Cir. 1987).

Respectfully submitted,

/s/Curtis L. Wrenn
Curtis L. Wrenn, Pro Se

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

CURTIS L. WRENN,

Plaintiff, No 3-91-1005

vs

VANDERBILT UNIVERSITY HOSPITAL, et al., JUDGE NIXON

Defendants,

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS HHS AND DEPARTMENT OF JUSTICE'S MOTION TO DISMISS

COMES NOW the plaintiff to file this memorandum in opposition to the Federal Defendants' motion to dismiss. For the reasons set forth in the Memorandum in Support and Material Issues, the defendants' motion must be denied. Summary dismissal is not appropriate for complicated cases and cases, such as this, involving important public, legal and constitutional issues. The important public issues in this case include, but are not limited to: the denial of information under the FOIA/PA, refusal to process and/or investigate complaints filed by the plaintiff, and providing aid and

assistance to public and private employers "defending lawsuits filed against them by Curtis L. Wrenn." See, e.g., Board of Education, Island Trees Union Free School District No. 26 v. Pico, 457 U.S. 853, 102 S. Ct. 2799, 73 L.Ed 2d 435 (1982). Moreover, the defendants have not met their burden of "clearly establishing the lack of any triable issue of fact". Bell v. Cameron Meadows Land Co., 669 F.2d 1278 (9th Cir. 1982) and are therefore not entitled to summary dismissal.

MEMORANDUM IN SUPPORT

I. BACKGROUND:

1. this is a case concerning the plaintiff's allegation that the federal defendants (EEOC, HHS and the Department of Justice) have conspired with the Defendant Vanderbilt and its legal counsel and employees to deprive the plaintiff of rights, privileges and immunities secured by the Constitution and laws of the united States. Specifically, the federal defendants have used lawful (monitoring charges of discrimination and lawsuits), unlawful (telephone wiretaps)

and questionable means (providing assistance in exchange for information from public and private employers and their legal counsel), to prevent the plaintiff's employment in his chosen profession of hospital and health care administration, AND to deprive him of the right to seek legal redress against those who denied him equal employment opportunity.

2. The plaintiff has, since at least 1981 (Exhibits 4, 5, and 7), conducted exhaustive efforts, at his peril to obtain information that would provide evidence to demonstrate the existence of a conspiracy by the federal defendants. Despite the fact he has used ONLY lawful means (administrative and Congressional appeals, newspaper advertisements and the federal courts), his efforts have met with sanctions (Exhibit 7) and threats of sanctions. That is, sanctions have been imposed, at the insistence of the federal defendants, in response to the plaintiff's complaints regarding the refusal to provide information he requested under the FOIA or because he asked the courts to direct HHS and /or EEOC to process and/or investigate his charges of unlawful discrimination (See

Exhibit 7, esp. pages 7 and 8).

3. Contrary to the federal defendants NO court has decided the issues presented in this case. That is, no court has decided the merits of plaintiff's claim that the federal defendants have conspired with Vanderbilt to deprive him of certain rights.

II. LEGAL ARGUMENT:

1. The issues presented in this case center around the following sections of The EEOC Act:

> Sec 706(b) provides "Whenever a charge is filed ... the Commission shall ... make an investigation thereof."
>
> Sec 707(a) "Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practices ... intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate court of the United States..."
>
> Also, the FOIA (5 USC 552(a)(3)) provides that an agency, upon request, must make its records "promptly available to any person" requesting them, provided the request "reasonable describes" the records sought.

The court is being asked to examine the facts in this case and

the above statutes to determine whether the federal defendants have conspired against the plaintiff, and have attempted to cover-up the conspiracy by denying him information under the FOIA.

2. Contrary to the federal defendants the plaintiff has submitted "a claim which relief can be granted." The issue before this Court is whether the Department of Justice abused its discretion under The EEOC Act when it provided aid and assistance to private and public employers and their attorneys in defending lawsuits filed by the plaintiff, while refusing to provide him with assistance in response to his request. it is clear that the "role" of the Attorney General is to combat unlawful discrimination AND not to aid and abet those who allegedly discriminate or otherwise violate the law. The "accepted rule", as stated by the Supreme Court, is "that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief". Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Thus,

the defendants' motion to dismiss must be denied.

3. Similarly, the complaint against HHS and EEOC must not be dismissed. Courts have held that a complainant must exhaust his Title VI remedies before proceeding in federal court. See, e.g., Howard Security Services v. Johns Hopkins Hospital, 516 F. Supp. 508 (D.Md. 1981); Boxhall v. Sequoia Union High School District, 1104 (N.D. Cal. 1979). Defendant HHS has refused to investigate the plaintiff's charges, including his charge against Vanderbilt.

4. On a motion for summary judgment, the moving party bears the burden of proving conclusively that no genuine issue of material facts exists, and that the moving party is entitled to summary judgment as a matter of law. On a motion for summary judgment the underlying facts contained in the affidavits, depositions, pleadings and incorporated exhibits, must be viewed in the light most favorable to the party opposing the motion. The relevant facts in the plaintiff's complaint are set forth in the written pleading and in the incorporated written exhibits. Under

Federal Rules of Civil Procedure 10(c), such exhibits are a part of the pleading for all purposes. Incorporated exhibits must be considered a part of the pleading for the purpose of determining the sufficiency of a complaint. Foshee v. Daoust Const. Co., 185 F.2d 23 (CA Ind 1950). See also Smith v. Hudson, 600 F.2d 60 (6th Cir. 1979). Also see, Bell v. Cameron Meadows Land Co. 669 F.2d 1278 (9th Cir. 1982) (a motion for summary judgment places an affirmative burden on the moving party to demonstrate the absence of genuine issues of material facts and to show that he is entitled to judgment as a matter of law).

5. In this case, the defendants did not meet their burden. The mere assertions of counsel made in legal memorandum, as in this case, are insufficient to establish existence of genuine issue of material fact. Transurface Carriers, Inc. v. Ford Motor Co., (1984), First Circuit, Docket No 83-1903. this court is being asked to have defendants produce documents under the FOIA, to justify withholding files, records and information requested by the

plaintiff, and determine whether the failure to disclose was a clear abuse of discretion. The District Court was given authority under 5 USC 552 (a)(3) to review de novo any denial of access in order that ultimate decision as to propriety of agency's action is made by court and to prevent review from becoming meaningless judicial sanctioning of agency discretion. Ray v. Turner (1978) 190 App DC 290, 587 F2d 1187, on remand (DC Dist Col) 468 F Supp 730. This Court is being asked to conduct a review similar to that of Vaughn v. U.S. 936 F.2d 862, 863 (6th Cir 1991). That is:

> "Court of appeals reviews district court's determinations under the Freedom of Information Act (FOIA) using two pronged approach; it first determines whether district court had adequate factual basis for its decision and then examines that decision to decide whether, upon that factual basis, court's decision was clearly erroneous."

6. The federal defendants have requested that they be granted summary judgment because, among other things, allegedly because the plaintiff received a decision on the merits of the same issues in Wrenn v. Kemp (Def. Ex. 2 and Plt. Ex. 9) and Wrenn v. Rosa (Def. Ex. 11 and Plt. Ex. 7). A

review of the facts in the two cases will demonstrate that the claims in this case against the Secretary of HHS and the Attorney General were not litigated in Wrenn v. Kemp, supra. Moreover, the prior hearing did not constitute the "full and fair opportunity to litigate the merits" required by Kremer v. Chemical Construction Corporation, 456 U.S. 461, 102 S. Ct. 1883, 72 L.Ed 2d 262 (1982). The facts in this case clearly demonstrate that the plaintiff HAS NOT litigated OR had a reasonable opportunity to litigate the same or similar type of issues raised in this complaint. See, e.g., Sea-Land Services, Inc. v. Gaudet, 414 U.S. 573, 94 S. Ct. 806, 39 L.Ed.2d 9 (1974). this Court is asked to review Kemp and Rosa to determine whether re judicata and collateral estoppel apply. Of particular concern is Kemp (an example of most FOIA efforts faced by the plaintiff) where the court states "the defendant each establish that they have RESPONDED (emphasis added) properly to plaintiff's requests and that no agency records have been improperly withheld." The court's decision means that it will NOT conduct the required de novo

review as long as the federal agency responds to the FOIA request, notwithstanding whether the information was improperly withheld or not. The courts have conveniently ignored the requirements of 5 USC 552(a)(6) (A)(ii) which requires that an agency's response must include at least the following four elements:

> "(1) statement of what agency will release and will not release, including list of documents that are releasable and withheld,
> (2) statement of reasons for not releasing withheld records,
> (3) statement notifying requesting person of his right to appeal to head of agency or to seek judicial review of any adverse determination, and
> (4) if fee is charged for releasing, ..." Shermco Industries, Inc. v. Secretary of U. S. Air Force (1978, ND Tex) 452 F. Supp 306, revd on other grounds (CA5 Tex) 613 F.2d 1314.

The court did not request additional information, and did "nothing more than rubber stamps for government's decision to deny disclosure." The courts in both cases did not have "sufficiently detailed information regarding the contents of withheld documents along with reasoning for the application of specific FOIA exemptions to enable the court to make an

independent assessment of both the contents of the documents in issue and the applicability of any asserted exemption(2)". Vaughn v. U.S., 936 f.2d 862, 869 (6th Cir. 1991). it is clear that the courts ignored the mandate that "the FOIA expressly places the burden "on the agency to sustain its action" and directs the district court to "determine the matter de novo". U.S. Dept of Justice v. Reporters, Sup Ct Case No 87-1379 (Mar 1979). It is clear and unrefuted by the evidence at Exhibit 7 and 9 that neither court determined the merits of plaintiff's claims that the responsible agencies unlawfully denied him information under the FOIA.

III. CONCLUSION:

The defendants have not presented evidence to demonstrate that there are no issues for trial. Accordingly, the motion to dismiss must be denied.

Respectfully submitted,

/s/Curtis L. Wrenn
Curtis L. Wrenn, Pro Se
95 Champion Street
West Carthage, NY 13619
Tel: (315) 493-4028

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing and the Plaintiff's Material Facts were mailed to Michael L. Roden, Esq., AUSA, 110 Ninth Avenue South, Suite A-961, Nashville, TN 37023-3870, on April 28, 1993, via first class U.S. mail.

/s/Curtis L. Wrenn
Curtis L. Wrenn

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

CURTIS L. WRENN,

Plaintiff,

VS

Civil No. 3-91-1005
JUDGE NIXON

VANDERBILT UNIVERSITY
HOSPITAL ET AL.,

Defendants.

PLAINTIFF'S REQUEST FOR LEAVE OF COURT TO FILE THIS MEMORANDUM IN OPPOSITION TO EEOC'S MOTION TO DISMISS

COMES NOW the plaintiff to file this request for leave of court to file this memorandum in opposition to the EEOC's motion to dismiss. Leave of court should be granted for the reasons set forth in Plaintiff's Memorandum in Opposition to Defendant EEOC's Request for Dismissal ... and plaintiff's Memorandum in Support which is incorporated herein. the core complaint, as set forth previously to the court, is plaintiff's FOIA request and appeal which is incorporated as Exhibit #1 to Plaintiff's Memorandum in Opposition to Defendant EEOC's Request for dismissal .... The EEOC has

failed and/or refused to respond to plaintiff's three appeals

(October 5, 1991, and January 18 and March 19, 1992).

Respectfully submitted,

/s/Curtis L. Wrenn
Curtis L. Wrenn, Pro Se

MEMORANDUM IN SUPPORT

I. BACKGROUND:

1. The plaintiff's core complaint against the EEOC in this case is its negligence and malicious intentional misconduct in processing and/or in failing or refusing to process and/or investigate his complaints of unlawful discrimination. And more importantly, the EEOC's refusal to provide information which he requested under the FOIA.

2. The FOIA (5 USC 552(a)(3)) provides that an agency, upon request, must make its records "promptly available to any person" requesting them, provided the request "reasonable describes" the records sought. Dunkelberger v. Dept. of Justice, Docket No 88-5356, (DC Cir CA June 29, 1990), page 2-3. See also EPA v. Mink, 410 U.S. 73, 80, 93 S. Ct. 827, 832, 35 L.Ed.2d 119 (1973) (FOIA is a broadly conceived "statute designed" to permit access to official information long shielded unnecessarily from public view." The FOIA establishes statutory presumption that all federal records are available to any person. Jordan v.

United States Dept. of Justice (1978) 192 App DC 144, 591 F.2d 753. See also, Dept. of Air Force v. Rose (1976) 425 US 352, 48 L Ed 2d 11, 96 S Ct 1592 (Purpose of FOIA is to pierce veil of administrative secrecy).

3. the plaintiff submits that he has no other recourse to prevent the abuse of poser and discretion by the EEOC. That is, the continuing action by the EEOC to deprive him of rights, privileges and immunities secured to him by the Constitution and laws of the United States including, but not limited to, first Amendment right of free speech and the fourteenth Amendment right of due process, and the rights promulgated by Congress in Title VII and the ADEA (to complain about unlawful employment practices without having his privacy invaded or being threatened, intimidated and/or harassed).

4. The FOIA provides clear administrative channels for a requester to obtain information from the responsible federal agency. In this case the plaintiff submitted his initial request to the EEOC's District Office in Nashville. The

request was partially granted and he appealed.

5. In that connection, after receiving a FOIA request for information, an agency must "(i) determine within ten days ... whether to comply with such request and ... immediately notify the person making such request of such determination ... and of the right ... to appeal to the head of the agency any adverse determination; and (ii) make a determination with respect to any appeal within twenty days ... after the receipt of such appeal." In this case the EEOC has not responded to plaintiff's appeal of the denial of information. See, e.g., Oglesby v. Dept. of the Army, CA DC, No 89-5219, decided December 4, 1990, 59 LW 2378.

6. The FOIA also provides that when an administrative appeal is denied, a requester has the RIGHT (emphasis added) to appeal the denial in court. An FOIA appeal can be filed in the United States District Court in the district where the requester lives. The requester can also file suit in the district where the documents are located. It is the latter which is at issue in this case. That is, where are the

records located? Nashville or Washington? In that regards attention is invited to page 18, Fourth Report by the Committee on Government Operations, July 10, 1991. Based on knowledge and belief the plaintiff submits that at the time he made his FOIA request the information requested was in the possession of the EEOC's District Office in Nashville, TN. for this reason, this complaint has not been presented to any other court nor has any court decided the merits of the claims herein presented.

II. LEGAL ARGUMENT:

1. FOIA (5 USC 552(A)(3)) provides that an agency, upon request, must make its records "promptly available to any person" requesting them. Dunkelberger v. Dept. supra. the purpose of the FOIA is to increase citizen access to government records and burden is on government to prove that document is exempt from disclosure. Shaw v. FBI (1985, DC Dist col) 604 f. Supp 342. court generally may not deny disclosure of documents under FOIA unless they are clearly covered by one of its exemptions. ACLU v. Brown,

(1979, CA7 I11) 609 f.2d 277. Moreover, the FOIA expressly places the burden "on the agency to sustain its action" whenever it withhold information under any of exemptions provided by FOIA. This court is being asked to examine the facts in this case to determine whether the EEOC has conspired against the plaintiff, and has attempted to cover-up the conspiracy by denying him information under the FOIA. Moreover, the court is being asked to conduct a de novo review to determine whether the EEOC violated the FOIA by not responding to plaintiff's request, AND whether that failure to respond to plaintiff's three appeals constitutes a waiver of ANY claimed exemptions provided by the FOIA.

2. The Supreme court has made clear that the FOIA's purpose is to provide the public with a means of learning what its government is up to. This is especially relevant in this plaintiff's effort to determine the basis for the government's action in refusing to provide records and information concerning employment discrimination complaints which he filed with the EEOC. See U. S. Dept. of Justice v. Reporters

Committee, 489 U.S. 749, 109 S. Ct. 1468, 1481, 103 L.Ed 2d 774 (1989). Of particular concern to the plaintiff AND the public is how the EEOC performs its statutory duties in processing and/or investigating complaints of employment discrimination filed by plaintiff.

3. Contrary to the defendants the plaintiff has not received a decision on the merits of the claims presented herein. Moreover, the prior hearings in ANY court did not constitute the "full and fair opportunity to litigate the merits" of the claims here presented, as required by Kremer v. Chemical Construction Corporation, 456 U.S. 461, 102 S. Ct. 1883, 72 L.Ed 2d 262 91982). The claims presented here are derived from the denial of information under the FOIA and the EEOC's subsequent refusal to respond to the plaintiff's administrative appeal.

4. The Defendant EEOC has not clearly demonstrated that it is entitled to summary judgment as a matter of law. On a motion for summary judgment the underlying facts contained in the affidavits, depositions,

pleadings and incorporated exhibits, must be viewed in the light most favorable to the party opposing the motion. The relevant facts in the plaintiff's complaint as amended are set forth in the written pleading and in the incorporated written exhibits. under Federal Rules of Civil Procedure 10(C), such exhibits are a part of the pleading for all purposes. Incorporated exhibits must be considered a part of the pleading for the purpose of determining the sufficiency of a complaint. Foshee v. Daoust Const. Co., 185 f.2d 23 (CA Ind 1950). See also Smith v. Hudson, 600 F.2d 60 (6th Cir. 1979). Also see, Bell v. Cameron Meadows Land Co. 669 f.2d 1278 (9th Cir. 1982) (a motion for summary judgment places an affirmative burden on the moving party to demonstrate the absence of genuine issues of material facts and to show that he is entitle to judgment as a matter of law).

5. In this case, the EEOC has not met its burden of demonstrating that there are no issues for trial. The mere assertions of counsel made in legal memorandum, as in this case, are insufficient to establish existence of genuine issue of

material fact. Transurface Carriers, Inc. v. Ford Motor Co., (1984), First Circuit, Docket No 83-1903. this court is being asked to have EEOC produce documents under the FOIA, to justify withholding and/or non-disclosure of information, files, records and information requested by the plaintiff, and determine whether the failure to disclose was a clear abuse of discretion. The District Court was given authority under 5 USC 552(a)(3) to review de novo any denial of access in order that ultimate decision as to propriety of agency's action is made by court and to prevent review from becoming meaningless judicial sanctioning of agency discretion. Ray v. Turner (1978) 190 App DC 290, 587 F 2d 1187, on remand (DC Dist Col) 468 F Supp 730. This Court is being asked to conduct a review similar to that of Vaughn v. U.S. 936 f 2d 862, 863 (6th Cir 1991). That is:

> "Court of appeals reviews district court's determinations under the Freedom of Information Act (FOIA) using two-pronged approach; it first determines whether district court had adequate factual basis for its decision and then examines that decision to decide whether, upon that factual basis, court's decision was clearly erroneous."

6. The EEOC has requested that it be granted summary judgment because, among other things, allegedly the plaintiff received a decision on the merits of the same issues in Wrenn v. Kemp and Wrenn v. Rosa. A review of the facts in the two cases will demonstrate that the claims in this case against the EEOC were not previously litigated in ANY court. Moreover, any prior court hearing did not constitute the "full and fair opportunity to litigate the merits" required by Kremer v. Chemical Construction Corporation, 456 U.S. 461, 102 S. Ct. 1883, 72 L.Ed 2d 262 (1982). The facts in this case clearly demonstrate that the plaintiff HAS NOT litigated NOR had a reasonable opportunity to litigate the same or similar type of issues raised in this complaint, the reason being (1) the plaintiff was attempting to exhaust his administrative remedies, and (2) the information requested was in Nashville. See, e.g., See-Land Services, Inc. v. Gaudet, 414 U.S. 573, 94 S. Ct. 806, 39 L.Ed.2d 9 (1974). This Court is asked to review Kemp and Rosa to determine whether re judicata and collateral estoppel apply. Of particular concern is Kemp (an

example of most FOIA efforts faced by the plaintiff) where the court states "the defendant each establish that they have RESPONDED (emphasis added) properly to plaintiff's requests and that no agency records have been improperly withheld." the court's decision means that it will NOT conduct the required de novo review as long as the federal agency responds to the FOIA request, notwithstanding whether the information was improperly withheld or not. The courts have conveniently ignored the requirements of 5 USC 552(a)(6)(A)(ii) which requires that an agency's response must include at least the following four elements:

III. ISSUES FOR TRIAL:

Plaintiff submits, that contrary to the Defendant EEOC, that the following issues have not nor can they be resolved by summary judgment:

1. Why the EEOC has not responded to the plaintiff's appeal of the denial of information under the FOIA.

2. Whether the EEOC has legal justification for the non-disclosure of information to the plaintiff.

3. Whether the EEOC's statement that "Your request is also denied with respect to a four page computer report dated January 17, 1991, concerning other Commission charges" filed by the plaintiff against public and private employers is justified by any of the exemptions under the FOIA.

IV. CONCLUSION:

The defendants have not presented evidence to demonstrate that there are no issues for trial. Accordingly, the motion to dismiss must be denied.

Respectfully submitted,

/s/Curtis L. Wrenn

Curtis L. Wrenn, Pro Se
95 Champion Street
West Carthage, NY 13619
Tel: (315) 493-4028

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed to Kathleen Oram, ESQ., EEOC, Washington, DC on May 10, 1993.

/s/Curtis L. Wrenn
Curtis L. Wrenn

P. O Box 203
Fort Drum, NY 13603
October 11, 1991

Office of Legal Counsel
U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
1801 L. Street, NW
Washington, DC 20507

RE: Wrenn v. Vanderbilt
Charge No 253-91-0399
91-9-FOIA-212-ME

Ladies and Gentlemen:

Enclosed please find my request for information under the FOIA and the denial by the Regional Attorney.

Please accept this as my appeal of the denial of my FOIA request. it is essential that I obtain any and all records of whatever kind or nature concerning the above captioned case of unlawful employment practices.

Very truly yours,

/s/Curtis L. Wrenn
Curtis L. Wrenn

Enclosure
CERTIFIED MAIL P120031398

U.S. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Washington D.C. 20507

Mr. Curtis L. Wrenn
P.O. Box 203
Fort Drum, New York 13603 NOV 6 1991

FOIA Number 91-9-FOIA-212-ME

Dear Requester:

Your appeal under the Freedom of Information Act (FOIA) has been processed. The paragraphs checked below apply:

[ ] Your appeal is granted.

[ ] Your appeal is denied for the reasons given in the initial denial of your request.

[ ] Your appeal is denied pursuant to the subsections of the FOIA indicated at the end of this letter. an attachment to this letter explains the use of these exemptions in more detail.

[x] Your appeal is granted in part and denied in part. Those records not released are being withheld:

[x] For the reasons given in the initial denial of your request.

[ ] Pursuant to the subsections of the FOIA indicated at the end of this letter. An attachment to this letter explains the use of these exemptions in more detail.

[ ] You must send a check for $_____made payable to the United States Treasurer to the above address. We have billed you for _____ hours of professional search time at a rate of $17.00 per hour, _____hours of clerical

search time at $7.00 per hour, and photocopying of _____ pages at $.15 per page. 29 C.F.R. ss1610.15. Address your correspondence the the attention of _____ _____.

[x] The records disclosed on appeal are enclosed. No fee is charged because the cost of collecting and processing the chargeable fee equals or exceeds the amount of the fee. 29 C.F.R. ss1610.15(d).

[ ] The records disclosed on appeal are enclosed. Photocopying and search fees have been waived pursuant to 29 C.F.R. ss1610.14.

ATTACHMENT D

[ ] You should contact the Regional Attorney who responded to your request to obtain the documents disclosed on appeal. the Regional Attorney will determine whether fees will be assessed.

[x] If you are dissatisfied with this decision, you may file a civil action in the United States district court in the district where you reside or have your principal place of business, where the agency records are situated, or in the District of Columbia.

[x] See attached Comments page for further information.

Sincerely,

Nicholas M. Inzeo
Assistant Legal Counsel

Applicable Sections of the Freedom of Information Act
5 U.S.C. sec. 552(b)

[ ] (2)
[x] (3)
  [x] Section 706(b) of Title VII
  [ ] Section 709(e) of Title VII
[ ] (4)
[x] (5
[ ] (6)
[ ] (7)(A)
[x] (7)(C)
[ ] (7)(D)
[ ] other (see attached)

cc: Joseph R. Terry, Jr.
Regional Attorney
Memphis District Office

chron
olc:aeld:wladams:jls:11/6/91

COMMENTS PAGE

The "investigator's Memorandum," regarding the recommended disposition of the charge, undated (5 pages), is withheld on appeal pursuant to FOIA exemption (b)(5). a computer report regarding other Commission charges, including one age discrimination charge, is withheld on appeal pursuant to exemptions (b)(3) and (b)(7)(c).